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Final liability allocation determination under sections 87 and 88 of the Telecommunications Act 2001 for 1 July 2015 to 30 June 2016 [2016] NZCC 30

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List of defined terms and abbreviations

Term	Definition
Act	Telecommunications Act 2001
Amendment Act	Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
ETP	external termination point
Interconnected bodies corporate	a body corporate that was connected to a liable person via one of the criteria set out in section 79(1)(a)-(e) that earned qualified revenue, even where such body corporate was not itself a liable person
ITP	internal termination point
LAD	liability allocation determination
LP	Liable person
Liable person	a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person
Minimum telecommunications revenue threshold	means $10 million of gross revenue (as determined in accordance with the specified information instructions) that a liable person (together with all interconnected bodies corporate) receives during a financial year for supplying either or both of the following: (a) telecommunications services by means of its PTN; and (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN
NZ GAAP	New Zealand Generally Accepted Accounting Principles
NZ IFRIC	New Zealand International Financial Reporting Interpretations Committee
NZ IFRS 15	New Zealand Equivalent to International Financial Reporting Standard 15 Revenue from Contracts with Customers
ONT	optical network terminal
PDN or public data network	a data network used, or intended for use, in whole or in part, by the public
PSTN or public switched telephone network	a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of

	providing telecommunication between telephone devices
PTN or public telecommunications network	a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication, and includes a PSTN and a PDN
QLP	qualifying liable person
Qualifying liable person	a liable person that traded in the 2014/15 financial year and, together with all bodies corporate connected via section 79, met the minimum telecommunications revenue threshold in that financial year
Qualified revenue	revenue determined by the Commission that is used to assess the amount of the TDL that a liable person must pay
Specified information	information requested by the instructions we issued on 30 June 2016
Specified information instructions	section 83 specified information and assurance report instructions that we issued on 30 June 2016
Telecommunication	the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature
Telecommunications services	any goods, services, equipment, and facilities that enable or facilitate telecommunication
TDL	Telecommunications Development Levy
TDL year	the period from 1 July to 30 June for which a TDL liability allocation determination is being made
TSO	Telecommunications Service Obligations in relation to a TSO instrument

Executive summary

Final determination

X1. This is the final liability allocation determination (LAD) for the 2015/16 Telecommunications Development Levy (TDL) year of 1 July 2015 to 30 June 2016, required by section 87 of the Telecommunications Act 2001 (Act). It allocates the amount each qualifying liable person (QLP) is required to pay of the total 2015/16 TDL of $50 million.

X2. The TDL is an annual levy that the government uses to pay for telecommunications infrastructure including the relay service for the deaf and hearing-impaired, broadband for rural areas, and improvements to the 111 emergency service.

Allocation of levy

X3. In keeping with the prescribed formula in section 85(1)(b) of the Act, we determined the below allocations by apportioning the $50 million 2015/16 TDL between QLPs, based on their qualified revenue.

Table 1: Levy allocation

QLP	Qualified revenue ($)	% of industry qualified revenue	Amount of TDL to pay ($)
Spark	$1,600,312,346	37.76%	$18,880,604.07
Vodafone	$1,111,417,170	26.23%	$13,112,582.43
Chorus	$938,780,982	22.15%	$11,075,807.84
2degrees	$307,257,000	7.25%	$3,625,040.94
Vocus	$143,455,255	3.38%	$1,692,495.77
Teamtalk	$38,999,239	0.92%	$460,115.93
Vector	$24,090,594	0.57%	$284,222.62
Ultrafast Fibre**	$21,527,000	0.51%	$253,977.15
Enable Networks**	$14,457,000	0.34%	$170,564.76
Kordia**	$13,970,141	0.33%	$164,820.77
REANNZ**	$8,554,000	0.20%	$100,920.73
Compass*	$5,015,000	0.12%	$59,167.34
Trustpower*	$4,309,000	0.10%	$50,837.90
Northpower**	$3,929,000	0.09%	$46,354.63
Transpower**	$1,906,000	0.04%	$22,487.13
Total Industry	$4,237,979,728	100%	$50,000,000.00

* A firm with an operating revenue over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

**s 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL. However, they provided separate disclosures, so their TDL allocations are displayed separately.

Summary of methodology

X4. For this final LAD we have used the methodology set out in the 2015/16 draft LAD that we issued on 31 October 2016, the 2014/15 final LAD that we issued on 9 December 2015, the 2013/14 final LAD that we issued on 22 December 2014 and the 2012/13 final LAD that we issued on 27 May 2014.

X5. The key parts of our methodology are:

X5.1 **Identifying QLPs for the 2015/16 TDL**. After reviewing information from last year's TDL disclosures, and new information provided by potential QLPs through section 82 of the Act, we identified a list of QLPs required to contribute to the 2015/16 TDL.[1]

X5.2. **The approach to calculating qualified revenue.** Each QLP's gross telecommunications services revenue (including the qualified revenue of any interconnected bodies corporate) was identified and the following amounts were subtracted:

X5.2.1 total payments made to other QLPs for telecommunications services;

X5.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

X5.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.

X5.3 **Compliance and assurance.** To ensure the accuracy and integrity of the draft and final LAD's, each QLP was required to provide us with either an audit report or an assurance report prepared by an independent auditor. We also reviewed each QLP's qualified revenue calculation for compliance and followed up on several concerns that we identified. In most cases the QLP was able to provide a satisfactory explanation or additional information when requested. Our compliance review also identified the need for QLPs and their auditors to take note of revisions to our templates and instructions, as in one instance a failure to do so led to a material adjustment to a QLP's share of the TDL.

X5.4 Subsequent to issuing our draft LAD, we liaised with Trustpower regarding its treatment of revenue from customers who purchased both telecommunication and electricity services. We agreed with Trustpower that it should submit revised schedules based on its restated financial statements. As a result Trustpower's qualified revenue increased.

[1] Information on the QLP criteria can be found in paragraph 14 of this final LAD.

Introduction

1. The Act regulates the supply of telecommunications services in New Zealand.

2. Subpart 2 of Part 3 of the Act prescribes our annual procedure for determining the amount of the Telecommunications Development Levy (TDL) payable by each qualifying liable person (QLP). The TDL was established under the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (Amendment Act) to assist the government in paying TSO[2] charges and funding improvements to New Zealand's telecommunications infrastructure.

3. This document is the final liability allocation determination (final LAD) for the period 1 July 2015 to 30 June 2016. The final LAD allocates the amount each QLP is required to pay of the total levy amount of $50 million for the 2015/16 TDL year.[3]

Outline

4. The final LAD sets out:

   4.1 The legislative background including terminology and the prescribed liability allocation process.

   4.2 Our methodology and reasoning, including:

      4.2.1 How we identified QLPs for the 2015/16 TDL process.

      4.2.2 The approach used to calculate qualified revenue.

      4.2.3 The compliance and assurance process used to ensure the accuracy and integrity of the draft LAD. This included checking that QLPs complied with their independent audit/assurance requirements and reviewing each QLP's calculations of their qualified revenue.

   4.3 Our final allocation of the TDL between the QLPs.

5. For this final LAD we continued to use the methodology we adopted for our 2015/16 draft LAD, 2014/15 LAD, 2013/14 LAD and our 2012/13 LAD. This continued the methodology from our 2011/12 LAD, although we adopted certain technical revisions in 2012/13 that we explained in our 2012/13 LAD.

6. We developed the methodology used for the 2011/12 LAD through a lengthy policy development process, which included consultation on several discussion documents,

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[2] As noted in the list of defined terms "TSO" means "Telecommunications Service Obligations in relation to a TSO instrument".

[3] $50 million is the total TDL levy amount that applies to the 2015/16 TDL financial year as provided for in Schedule 3B of the Act.

and a workshop involving telecommunications service providers and other key stakeholders.[4]

[4] Our website contains material relating to the process at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

Legislative background

The TDL

7. The TDL was introduced by the Telecommunications Amendment Act 2011. It replaced the net cost calculation and allocation process for the TSO, and requires the Crown to pay TSO charges from the TDL.

8. Schedule 3B of the Act stipulates that the TDL is $50 million dollars for the 2015/16 financial year.

9. Subpart 2 of Part 3 of the Act requires us to make a TDL liability allocation determination on an annual basis and in respect of the TDL year, which is the financial year of 1 July to 30 June.[5]

10. The TDL is allocated among persons who meet the criteria set out in subpart 2 of Part 3 of the Act. The criteria are met if a person:

    10.1 traded in the year prior to the TDL year;[6]

    10.2 provided a telecommunications service in New Zealand by means of operating a component of a Public Telecommunications Network (PTN);[7] and

    10.3 earned at least $10 million gross telecommunications services revenue in the year preceding the TDL year under review by means of its PTN or by means that rely primarily on the existence of its or any other PTN, including such revenue of any interconnected bodies corporate.[8]

11. Section 82 of the Act requires liable persons (LPs) that meet the criteria in paragraph 10 (QLPs) to provide us with their financial statements for the year prior to the TDL year, and any further information that we specify, no later than 60 working days before the end of the financial year. We use this information to verify who is liable to pay a portion of the TDL.

12. Section 83 of the Act requires QLPs to provide us with their qualified revenue information for the entire TDL year for the purposes of the LAD. We use this information to determine what proportion of the TDL each QLP is required to pay.

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[5] "Financial year" is defined in section 5 of the Act as meaning "a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year". "Financial year" in section 81 is referred to as 'financial year A.' Section 81(2) provides that the Commission may request certain financial information from liable persons "for the purpose of determining whether a person is a liable person to whom this subpart applies *in respect of a financial year*". Section 81(2)(b) also states that the Commission may request any further information "for the purpose of enabling it to verify the telecommunications revenue of that person *for the year preceding financial year A*".

[6] Section 81(1)(a) of the Act.

[7] Definition of 'liable person' in section 5 of the Act.

[8] Section 81(1)(b) and section 79 of the Act.

13. Sections 85(1)(a) and 88(a) of the Act state that the liability allocation determinations (both the draft and final determinations) must include "the amount of each liable person's qualified revenue".

14. Qualified revenue is defined in section 5 of the Act as the revenue a LP receives during a financial year for supplying either or both:

    14.1 telecommunications services by means of its PTN; and/or

    14.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

15. The total qualified revenue for purposes of assessing the amount of the TDL a QLP must pay consists of the combined qualified revenue of the QLP and all interconnected bodies corporate.

16. Section 89 of the Act requires each QLP to pay the amount set out in our final LAD to the Crown.

Terminology

17. It is important to note that information for the financial year preceding the TDL year is used to identify if a party is required to pay, and that information from the TDL year (sourced later in the year) identifies how much a party is required to pay.

18. We use the term 'qualifying liable person' (QLP) to describe the liable persons (LPs) that must pay a portion of the TDL. A service provider is a liable person (and therefore potentially a QLP) if it:[9]

    18.1 provides a telecommunications service, which may include the transmission of voice, data, SMS, or any other content, but excludes broadcasting (ie, the transmission of programmes for the reception by the public);

    18.2 provides the telecommunications service in New Zealand;

    18.3 operates a component of the PTN over which the telecommunications service is provided;

    18.4 operates a component of a PTN that falls within the public side of the network demarcation point – the component must be operated by the service provider, not a third party; and

    18.5 operates a network that is publicly available, ie, not limited to private use.

19. As we explained in our 2012/13 LAD, a party operates a component of a PTN where it has legal ownership and control, but the term 'operate' also has a wider and more

[9] Details of our development of these rules can be found on our website, including in the 2011/12 LAD, at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

practical focus, which includes the concepts of management and making the PTN components work.

Interconnected bodies corporate

20. Section 79(1) of the Act requires two or more bodies corporate to be treated as one for purposes of the TDL if:

    (a) one of them is a body corporate of which the others are subsidiaries; or

    (b) all of them are subsidiaries of the same body corporate; or

    (c) all of them are associates of each other; or

    (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or

    (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.[10]

21. We consider that for TDL purposes it is consistent with the intent and purposes of the Act, to include all bodies corporate that were connected to a LP via one of the criteria set out in section 79(1)(a)-(e) that earned qualified revenue, even where such bodies corporate were not themselves LPs. This approach is in keeping with the anti-avoidance intention of this provision and would address a situation where a QLP could structure its business to separate the operation of components of the PTN from all or some of the group's downstream telecommunications services revenue, and thus reduce its contribution to the TDL (and other industry levies).[11]

22. Accordingly, for section 79 of the Act to apply only one of the interconnected bodies corporate has to operate a component of the PTN.

23. Therefore, when assessing whether they meet the minimum telecommunications revenue threshold of $10 million, and when providing the Commission with information under sections 82 and 83, LPs and/or QLPs must include all qualified revenue of other interconnected bodies corporate, even where such firms may not have operated a component of a PTN themselves.

The liability allocation determination process

24. Subpart 2 of Part 3 of the Act requires us to complete an annual LAD. This section describes our process.

25. The process commences before the end of the TDL year that the obligation applies to. The process is expected to start in April and last about eight or nine months.

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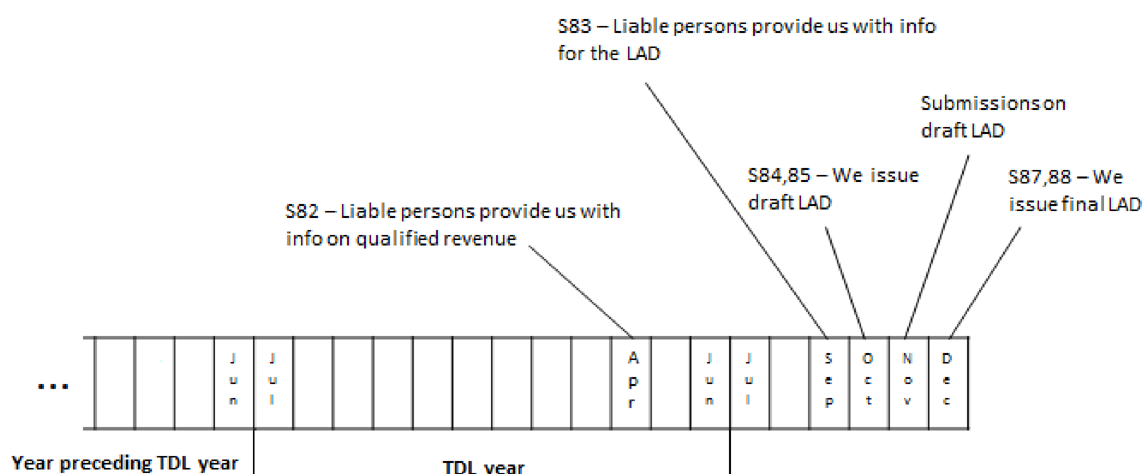
[10] Section 79(1)(a)-(e) of the Act.

[11] We note that such business structures could exist for reasons other than the TDL.

TDL Timeline



QLP verification

26. Section 82 of the Act requires QLPs to provide the Commission with financial statements for the financial year preceding a TDL year and any other information we specify to enable us to verify that they are a QLP. This financial and shareholding information is required 60 working days prior to the end of a TDL year (which usually equates to the first week of April).

27. We usually inform QLPs from the previous TDL year that they need not submit financial statements under section 82 of the Act because we have this information as part of their qualified revenue disclosures from the previous year.

28. We may also, around this time, undertake an additional process of serving notices to require information under section 81 of the Act. This may be done for telecommunications service providers:

    28.1 that we suspect may have met the QLP criteria and should have complied with section 82; or

    28.2 where we consider that we do not have sufficient financial or shareholding information to assess their QLP status in terms of the criteria.

29. We then analyse the information that we receive from LPs complying with section 82 requirements (and any notices under section 81), to verify a list of QLPs that are required to pay a portion of the TDL. This list is not final and can be amended at any stage up to the date of publication of the final LAD if we receive information that unveils a new QLP.

Qualified revenue information disclosure

30. Around the end of June of the TDL year, the QLPs identified through our QLP verification process will be notified that we require information from them, with instructions on the type and format of that information. This information will relate to the TDL year under review (the full financial year just completed).

31. Under section 83 of the Act, QLPs must provide us with the specific financial information. The information is due 60 workings days after the end of each TDL year, around the end of September. We use this information, less a few important deductions (identified in our specifications), to calculate each QLP's net qualified revenue and then calculate the portion of the TDL they are each required to pay.

32. The Act requires that this information be accompanied by a report, prepared by a qualified auditor, which includes a statement of the extent to which the information provided by the QLP is correct and complete.[12]

Preparing and completing the liability allocation determination

33. We are required to make reasonable efforts to complete a draft LAD no later than 80 working days after the end of the TDL year, which is mid-October. A draft LAD must include:[13]

    33.1 each QLP's qualified revenue;

    33.2 each QLP's TDL liability, calculated in accordance with section 85(1)(b); and

    33.3 our reasoning, and the methodology we used.

34. We are required to give public notice when the draft LAD is released.[14] The Act provides that the closing date for submissions cannot be more than 20 working days after the date of public notice.[15]

35. In addition to submissions, we may convene a conference to discuss matters related to the draft LAD.[16] We can invite any person who has a material interest in the draft LAD to a conference. Conferences are generally reserved for situations where there is a serious need, such as where issues arise that require further discussion among the parties.

36. Once we have completed the consultation on a draft LAD (and, if relevant, a revised draft LAD), we must complete a final LAD. We are required to make reasonable efforts to complete a final LAD no later than 20 working days after the closing date for submissions on the draft LAD (or if relevant, the revised draft LAD), which would usually be mid-December.[17] The final LAD has the same content requirement as the draft LAD.[18] Our general practice is to also include a summary of any submissions or consultative processes, and any resulting changes to the final LAD.

Relevant statutory references

37. A list of relevant statutory references can be found in Attachment C.

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12 Section 83(2)(b) of the Act.
13 Section 85 of the Act.
14 Section 84(1)(b) of the Act.
15 Section 84(1)(c) of the Act.
16 Section 86 of the Act.
17 Section 87(2) of the Act.
18 Section 88 of the Act.

Methodology and reasoning

Introduction

38. On 30 June 2016 we published a number of documents on our website to help QLPs comply with section 83 of the Act. Using the information from section 82 of the Act and information from last year's TDL, we published an updated list of QLPs for this year, the specified information templates, specified information instructions, a list of relevant statutory references and a list of specified information. On 30 June 2016 QLPs were notified about these documents and sent an email containing the links to our website where they could be found.

39. An email was also sent to all QLPs on 9 September 2016 reminding them of the specified information deadline and again attaching the links to the instructions on our website.

40. Once we received the specified information from the QLPs, we conducted a compliance review, details of which can be found in paragraphs 155 to 164.

41. We issued our draft LAD on 31 October 2016. We received submissions from Chorus and Spark.

42. Chorus supported our compliance review in its submission, stating that "we continue to support the Commission's compliance review which includes checking the calculations of qualifying liable persons for compliance with the qualified revenue notice, and adjusting qualified revenues according to its findings".[19]

43. Spark supported our methodology for calculating qualified revenue stating "we support the Commission's general approach to identify liable revenues – it's consistently applied the methodology and sought to align with accounting standards."[20]

44. Spark submitted "that the methodology may need to be amended over time to reflect – for example – changes to accounting standards and the market".

45. We agree that there are situations when our methodology will need amending, and note that we have previously made amendments for changes in both accounting and auditing standards, and also market conditions. For example in 2014/15 we made revisions to reflect changes to the professional audit and assurance standards and at other times have revised our guidance on revenue streams to reflect market conditions.[21] Our annual consultation process on our draft LADs provides QLPs and other interested parties with an opportunity to identify issues that may require revisions to our methodology.

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[19] Chorus, *Submission on Draft Liability Allocation Determination under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2015 to 30 June 2016,* 11 November 2016.

[20] Spark, "*Submission: Draft Liability Allocation Determination under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2015 to 30 June 2016,* 16 November 2016, para 2.

[21] Examples including adding guidance around customer loyalty programmes, payments for indefensible right (IRU), and the treatment of revenue and payments for services subject to one of our pricing reviews.

46. Spark also submitted that we should add transitional obligations on QLPs that adopt the new accounting standard for revenue, NZ IFRS 15, before it becomes mandatory. In effect, NZ IFRS 15 will be mandatory for QLPs for the 2018/19 TDL year.[22]

47. We respond to Spark's submission regarding NZ IFRS 15 in our section on changes to accounting practice and customer loyalty programmes in paragraphs 83 to 103 and 136 respectively. In paragraphs 162 to 164, we discuss how we treated Trustpower's early adoption of NZ IFRS 15 in allocating this year's TDL.

48. In this final LAD we have maintained the methodology used in our draft LAD, updated to take account of the further and revised disclosure provided by one QLP. This final LAD also includes consideration of Chorus' and Spark's submissions.

Identifying QLPs for the 2015/16 TDL process

49. For the 2015/16 TDL process, we reviewed information provided by QLPs as part of their 2014/15 qualified revenue disclosures as well as information provided under section 82 of the Act by other LPs.

50. On 30 June 2016 we published a list of firms that we had identified as being QLPs for the purposes of the 2015/16 TDL process. We confirm that the firms on this list are the QLPs for the purpose of the 2015/16 LAD.

51. This list differs from that for 2014/15 LAD as it reflects changes in the New Zealand market. The Callplus group is now shown as connected to the Vocus group.[23] Now New Zealand Limited is connected to the Spark group (from 30 November 2015). Vodafone New Zealand Ltd (previously an independent QLP) is now shown as connected to Vodafone Next Generation Services Ltd as part of the Vodafone group. Woosh Wireless (NZ) Ltd and WorldxChange Communications Ltd are not QLPs for the 2015/16 TDL.

52. The rest of this section:

    52.1 explains our net revenue approach to calculating qualified revenue, which was adopted for the 2011/12 LAD and continued for the 2012/13, 2013/14, 2014/15 and 2015/16 TDL processes;

    52.2 sets out our reasons for this approach and the accounting practices supporting its implementation; and

    52.3 explains the compliance and assurance process used to ensure the integrity and accuracy of the information used in the LAD process.

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22 NZ IFRS 15 becomes mandatory for annual periods beginning on or after 1 January 2018.

23 The Australian-owned company M2 completed its acquisition of CallPlus in July 2015 with all the CallPlus brands continuing to operate. M2 then merged with fellow Australian-owned telecommunications operator Vocus in February 2016, but only the M2 brand disappeared in New Zealand.

53. In previous consultations, parties supported maintaining our approach on *"*a consistent basis from year to year".[24] Parties also agreed that additional precision in measuring the components of qualified revenue would not necessarily change the allocation of the levy appreciably.[25]

54. For this reason, and to reduce compliance costs, we developed an approach to calculating qualified revenue that:

    54.1 relies on information that is readily available across a wide range of firms;

    54.2 is applicable across a wide range of firms with varying products, business models, and reporting capabilities, rather than being designed to meet the business practices and concerns of any one firm; and

    54.3 where possible, relies on common auditable information that QLPs are likely to keep for other purposes (such as statutory reporting and billing).

55. The approach presented in this section was developed specifically for the LAD process and should not be taken as guidance for compliance with any other notice, determination or other requirements we may issue.

Approach to calculating qualified revenue

56. The 2015/16 specified information instructions required QLPs to estimate their qualified revenue as follows:

    56.1 calculate gross telecommunications services revenue by applying the directions provided on the inclusion and exclusion of common revenue streams; [26] and

    56.2 apply the net revenue assessment method, which assesses a QLP's telecommunications revenue and subtracts:

        56.2.1 total payments made to other QLPs for telecommunications services

        56.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

        56.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.[27]

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24 Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013. Page 1.

25 Commerce Commission, *TDL Qualified Revenue Workshop,* Wellington, 13-14 November 2012. Day 1.

26 These directions were provided in the form of an attachment, which is Attachment B of this final LAD.

27 Revenue from the sale of a non-telecommunications goods or services can only be included in the gross telecommunications services revenue if the QLP does not have separately identifiable revenue stream relating to the sale. Therefore, equipment retailed in bundles must have been sold in a bundle by the QLP (eg, through its own retail outlets). If equipment is wholesaled unbundled at an arms-length price and later bundled by an independent retailer, then the QLP must value the sale at the wholesale price (and treat it as non-telecommunications services revenue).

Qualified revenue conventions

57. This section sets out the framework we developed to calculate qualified revenue for the 2011/12 LAD, and have continued using for the 2015/16 TDL process, in order to determine the proportion of the TDL payable by each QLP. This section:

    57.1 summarises our reasons for using the net revenue method to calculate the qualified revenue for each QLP; and

    57.2 explains our formula for calculating each QLP's qualified revenue.

Rationale for choosing the net revenue method

58. In selecting the method for assessing the relative proportion of the TDL payable by QLPs for the 2011/12 TDL year, we considered the approach adopted for the previous TSO regime, changes since the TSO regime, the relative merits of different approaches, and submissions on our consultation documents.

59. We chose to adopt the net revenue approach, which had previously been used for the TSO regime. The net revenue method includes all revenues received by each QLP after the deduction of payments between QLPs for the sale/provision of telecommunications services.

60. We considered that the net revenue method was the appropriate revenue method because it captures revenues earned by both wholesale and retail service providers, which is the intention behind the definition of qualified revenue. We also consider that it avoids double taxation.

61. The gross revenue method was ruled out because it taxes some revenue streams twice.[28]

62. The retail revenue method was ruled out because a segment of the QLPs would not contribute to the TDL as this method would not capture revenue for wholesale service providers.[29] In our view this does not reflect the objectives of subpart 2 of Part 3 of the Act.

63. Further details on how we chose the net revenue method can be found in our 2011/12 LAD and previous consultation.[30]

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[28] *Gross revenue method*: includes all relevant revenues received by each liable person, regardless of whether the revenue is from sales to end-users or not.

[29] *Retail revenue method*: includes only the revenues earned by each liable person from selling services directly to end-users.

[30] This information is on our website http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl/. Attachment A of the 2011/12 LAD provides an example to illustrate the differences between the three possible revenue assessment methods.

Formula to calculate qualified revenue based on the net revenue method

64. Our 2015/16 specified information instructions included a formula setting out how each QLP should calculate its qualified revenue. The formula is set out in Table 2 below.

Table 2: Formula to calculate qualified revenue[31]

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$ a	
b		Non-telecommunications services revenue (if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

65. In developing this formula for the 2011/12 LAD, we consulted on how to treat bundles that include both telecommunications and non-telecommunications goods and services.[32] We also specifically considered the treatment of subsidies and rebates paid on mobile handsets and tablets.

66. The next section presents an overview of the position we formed on valuing the non-telecommunications component of a bundle. Our 2011/12 LAD contains further explanation of our position and the issues we considered in reaching it.

Allowing for non-telecommunications services revenue when bundled with telecommunication services

67. Operators sometimes sell services to consumers in bundles and in particular, triple play bundles.[33] The bundled price is typically less than the combined prices of purchasing all the products in the bundle separately.

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[31] Step (e) 'timing adjustment' is only required if the company has a statutory year end other than 30 June. The timing adjustment will typically represent the effect on gross telecommunications revenue from the statutory accounts and TDL financial year having different year ends and thus relating to different revenue periods.

[32] For example, Commerce Commission, *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy,* 19 October 2012, para 77-97.

[33] Bundling refers to a situation where two or more goods are sold together. Most cases that we deal with in the TDL are mixed bundling, which is where components of the bundle are available on a standalone basis and available in a bundle. This was noted in Vodafone's submission on the 2011/12 LAD, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, page 1.

68. If telecommunications goods and services and non-telecommunications goods and services are sold by a QLP in a bundle, the qualified revenue calculation needs to subtract the value of the non-telecommunications goods and services.

69. Treating the cost of the bundled non-telecommunications goods as costs of sale of the telecommunications services, would disadvantage QLPs that sold bundles, including those who gave away free devices (eg, handsets) compared to those who did not offer bundles.

Approaches to valuing the non-telecommunications component of a bundle

70. We consider that the value of non-telecommunications goods and services sold in a bundle with telecommunications services should be deducted based on their input cost.

71. We chose the input cost approach for the 2011/12 LAD because it provides benefits in terms of compliance costs, and objectivity and fairness in the TDL allocation. For the 2015/16 final LAD, we have continued to use the input cost approach because we consider that it:

    71.1 avoids (or minimises) manipulation in the calculation of the value for the non-telecommunications services component of the bundle;

    71.2 ensures a consistent approach between QLPs due to consistency across business models in relation to input costs;

    71.3 can be calculated using existing accounting records that QLPs should have recorded for other purposes (such as paying suppliers); and

    71.4 avoids some of the implementation problems of the observable value approach, such as the lack of an observable price for some components of a bundle, or there being a large spread in the observable prices for one component of a bundle.

72. It should be noted that this approach is only for TDL purposes, to determine relativity between QLPs, and does not predetermine our future decisions in other areas.

73. Our 2015/16 specified information instructions included directions on how the QLPs should calculate the input costs for the different types of non-telecommunications goods and services. Each approach sought to capture the relevant direct or directly attributable costs as calculated in accordance with NZ GAAP. These approaches were designed to promote consistency across QLPs and to tie the cost to readily available information, such as invoices, to reduce compliance costs. These information specifications were based on those used in the 2013/14 and 2014/15 LAD processes which included revisions to provide greater clarity and address issues identified during the 2012/13 LAD process.

Handset subsidies and rebates

74. Our 2015/16 specified information instructions only allow deductions for the cost of non-telecommunications equipment included in bundled sales where the QLP provided the non-telecommunications equipment to the end customer. Therefore, rebates (or a value derived from the rebates) paid to indirect channels (independent retailers such as national electronics shops and franchisees) cannot be deducted from gross telecommunications revenue.

75. The treatment of rebates paid to indirect channels was raised as an issue for the 2011/12 LAD in the context of rebates paid by mobile operators to indirect channels who supplied 'subsidised' handsets to customers that entered into term contracts for mobile services.

76. After considering submissions on our 2011/12 draft LAD, and other information provided to us, we confirmed and explained our view on rebates in our 2011/12 LAD and have maintained it to date.

Other matters: accounting practices

77. Our 2015/16 specified information instructions required QLPs to estimate their qualified revenue in accordance with a set of regulatory reporting principles and several prescribed accounting practices. These provided guidance on issues that we had identified as requiring further clarity, and sought to ensure that the information disclosed was sufficiently objective, accurate and reliable for the purposes of the TDL. These requirements were based on those used in the 2014/15 LAD process.

Reporting principles

78. Our 2015/16 specified information instructions required QLPs to apply five overarching reporting principles when preparing the disclosed information under section 83 of the Act (or via other means). These principles were developed as part of the 2011/12 TDL framework development process and are correctness, completeness, objectivity, consistency and data retention.[34]

79. During the LAD framework development process, industry was generally supportive of these principles. In response to consultation feedback, we revised the definition of correctness to make it clear that the level of accuracy required did not exceed that required under NZ GAAP.

80. In preparing this final LAD, we applied the principle of "objectivity" to determine whether Trustpower's qualified revenue should be based on its 2015/16 statutory accounts or restated values prepared using a new accounting standard. This issue is discussed in our compliance review section and demonstrates the value of having reporting principles.

[34] Refer to Attachment A of this document for the definition of each principle.

July to June financial year

81. Our 2015/16 specified information instructions required QLPs to provide the specified information for the TDL year of 1 July 2015 to 30 June 2016.

82. We included instructions for QLPs with statutory year ends other than 30 June, on how to complete the required disclosures. We sought to balance the compliance costs of making the adjustments, with the need for a reasonable level of accuracy. For example, the instructions recognised that a QLP may need to make estimates of the TDL year specific revenue is recognised in. However, the instructions also had provisions to ensure that these estimates do not result in revenue never being included as qualified revenue (which would disadvantage other QLPs).

Changes in accounting practices: level of disclosure

83. Our 2015/16 specified information instructions required QLPs to address the effects of changes in accounting practices on qualified revenue in their disclosures. This was included to recognise that firms have valid reasons for changing their accounting practices, but also to require them to make reasonable efforts to ensure that such changes do not result in them under-reporting their long-term qualified revenue.

84. These requirements include that when a change in accounting practices impacts on when revenues or costs are recognised, the QLP must make reasonable efforts to ensure that the affected qualified revenue is disclosed in the year that the change in accounting policy is made, or failing that in the year when the revenue or cost is first recognised.

85. One reasons for a QLP to change its accounting practices is that it adopts a new accounting standard.

86. Spark in its submission on our 2015/16 Draft LAD, proposed that we should "Implement a TDL reporting requirement that, in the year a firm adopts NZ IFRS 15, it clearly articulate(s) the impact of the change" and also noted that this was "likely to be required for their financial statements in any case".[35] Spark also stated that the adoption of NZ IFRS 15 may impact size of qualified revenue and gave the example of Trustpower's early adoption of NZ IFRS 15 reducing its telecommunications revenue.[36]

87. In 2014, NZ IFRS 15 was issued by the relevant NZ standard setting body. IFRS 15 does not become mandatory until the 2018/19 TDL year, although QLPs may elect early adoption, as Trustpower did this year.

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[35] Spark, "Submission: Draft Liability Allocation Determination under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2015 to 30 June 2016, 16 November 2016, para 9.

[36] In the case of Trustpower the early adoption of NZ IFS 15 actually increased its qualified revenue, even though the restated figures showed decreased operational revenue from telecommunication services. We have discussed this with Trustpower and are satisfied with its explanation. This amount is small relative to Trustpower's corporate revenue.

88. NZ IFRS 15 will provide a single source of requirements for accounting for all contracts with customers (except for some specific exceptions, such as lease contracts and insurance contracts).[37]

89. IFRS 15 includes transitional provisions regarding the disclosure of early adoption and the treatment of contracts that span multiple reporting periods.[38] When a firm adopts NZ IFRS 15, it should apply the standard in full for the current period, including retrospective application to all contracts that were incomplete at the beginning of that period.[39] The transitional provisions also require explanations to be provided for a range of situations.

90. We consider that the transitional provisions in NZ IFRS 15 are largely consistent with the intent of our current requirement for changes in accounting practices. Both approaches seek to recognise and require adjustment for changes impacting multiple periods. However, when NZ IFRS 15 requires timing adjustments to be shown as a change in opening retained earnings, this could result in some revenue not been reported as operating revenue in any TDL year (or potentially double reported).

91. We intend to revise our specified information instructions to state that compliance with NZ IFRS 15's transitional provisions meets our requirements for reporting changes in accounting practices unless this results in long term over or under reporting of qualified revenue. In these cases we will require QLPs to adjust for any over or under reporting of TDL qualified revenue using values in keeping with the transitional provisions of NZ IFRS 15.

92. Our experience from our compliance reviews of QLPs indicates that many of the effects from changing accounting practices are muted by offsetting factors.[40] Our experience also suggests that (to varying degrees) many QLPs are already applying accounting practices consistent with NZ IFRS 15, even if they have not formally adopted the standard. These factors are likely to reduce the effects from when these QLPs formally adopt NZ IFRS 15.

93. Hence we do not consider the long term effect of NZ IFRS 15 on QLP's levy payments will necessarily have the impact implied by Spark.

94. Accordingly we do not consider that it is necessary for our specified information requirements to require QLPs that elect early adoption of NZ IFRS 15 to provide additional disclosures above those required by NZ IFRS 15. If we consider that a QLP

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[37] NZ IFRS 15 will supersede NZ IAS 11 Construction Contracts, NZ IAS 18 Revenue; NZ IFRIC 13 Customer Loyalty Programmes, NZ IFRIC 15 Agreements for the Construction of Real Estate, NZ IFRIC 18 Transfers of Assets from Customers, and NZ SIC-31 Revenue—Barter Transactions Involving Advertising Services.

[38] NZIFRS 15, Appendix C Effective date and transition.

[39] NZIFRS 15, Appendix C para C3, C7. Under NZ IFRS 15, there are two methods of retrospective application, either full restatement or cumulative catch-up transition. Both methods will result in the same change to the opening balance for retained earnings.

[40] The offsetting factors include changing that an increase in one year's revenue is offset by a reduction in the subsequent year's revenue (eg, from changing the accounting treatment of term contracts) and that separately recognising the revenue from 'free' hardware as non-telecommunication services revenue is offset by not deducting the cost of the hardware when calculating qualified revenue.

fails to provide the required disclosure about its early adoption of NZ IFRS 15 in its statutory accounts, we have the option to take follow up action through our compliance review which may include the use of our compulsory information gathering powers.

Changes in accounting practices: Bundles and NZ IFRS 15

95. As NZ IFRS 15 relates to revenue and the TDL is a revenue based levy, we have outlined our initial views on how it may impact the TDL..

96. NZ IFS 15 provides additional guidance for the recognition of revenue from bundles and terms contracts, both of which are common in the telecommunications sector.[41]

97. Our TDL methodology allows for QLPs to account for bundles by either separately identifying and excluding the revenue attributable to the non-telecommunication services (separate revenue approach); or, if the QLP cannot do this, by subtracting the cost of the non-telecommunication services (deduction approach). In practice both approaches are used by QLPs.

98. QLPs that adopt NZ IFRS 15 must follow a prescribed methodology to identify the revenue benefit from each "performance obligation" in a bundle. This approach is consistent with the separate revenue approach currently in our TDL methodology. We expect that for some QLPs the early adoption of NZ IFRS 15 will assist in completing their TDL disclosures, as it will make it easier to apply the separate revenue approach.

99. Our methodology was developed in the context of bundles that included telecommunications end-user equipment (eg, modems) or services used in conjunction with telecommunication services (eg, hosting services). Hence our specified information instructions include guidance for bundles typically offered by the telecommunications sector.

100. This year's TDL process indicated that we should provide specific guidance for revenue where telecommunication services are bundled with goods and/or services that are usually sold separately to telecommunications services. This situation requires specific guidance as the allocation of revenue and discounts that apply across high value bundles can significantly impact the size of a QLP's qualified revenue.

101. We intend to revise our specified information instructions to require QLPs to follow the guidance of NZ IFRS 15 to allocate revenue and associated bundle discounts earned from bundles of telecommunication services with non-telecommunications goods and services for which we currently do not provide specific guidance.[42] This will require revenue to be allocated in proportion to the standalone prices of the separate services or goods. We consider that the impact and compliance costs for such a requirement will be minimal given our observation of QLPs current market

[41] NZ IFRS 15 para. 73 to 83

[42] NZ IFRS 15 para. 76, 77, 81

offering and accounting practices, combined with the fact that the standalone prices for these bundled goods and services should be known to the relevant QLPs.[43]

102. When NZ IFS 15 becomes mandatory in the 2018/19 TDL year, QLPs are more likely to separately identify the telecommunications and non-telecommunication revenue earned from bundled offers. This should reduce the effort required by QLPs to complete their TDL disclosures. It may also reduce the need for QLPs to use the deduction approach when calculating qualified revenue.

103. We also intend to consult on the broader impact of NZ IFRS 15 to our TDL methodology in advance of NZ IFRS 15 becoming mandatory in order to help QLPs factor their TDL obligations into the changes they will make to their accounting processes.

Other matters: particular revenue streams

104. Our 2015/16 specified information instructions included guidance on how QLPs should classify common types of telecommunications revenue when calculating their qualified revenue. This guidance is found in Attachment B of this final LAD and includes our rationale for including or excluding these revenue streams as qualified revenue.

105. The rest of this subsection explains our view on several of the revenue streams.

Revenue from building, maintaining and renewing network infrastructure

106. The Act requires QLPs to pay the levy on revenue received from providing services by means of a PTN, or which rely primarily on the existence of a PTN. This requires us to identify what payments (capital contributions) towards the construction and enhancement of the PTN should be deductible when calculating qualified revenue, and which one-off payments should be included in qualified revenue.

107. Our 2015/16 specified information instructions required QLPs to treat:

107.1 capital contributions made towards developing the PTN by a QLP's customer, as deductible when calculating gross telecommunications revenue, subject to several conditions;[44] and

107.2 revenue from operational contributions for building, maintaining and renewing the PTN as qualified revenue.

[43] As NZ IFR 15 allows firms to use an expected cost plus margin method, when a stand-alone price is not directly observable, a requirement to follow NZ IFRS 15 should not increase compliance costs for a QLP should there be a scenario where there is neither an observable stand-alone price or other specific guidance provided in our specified information instructions.

[44] Our specified information instructions also include requirements that QLPs record related asset(s) as a fixed asset(s) under NZ GAAP to claim the capital contribution as a deduction.

Capital contributions

108. Our 2015/16 specified information instructions allowed QLPs to deduct capital contributions made towards material non-routine additions or enhancements of the PTN network's ability to serve the public, from qualified revenue. These payments provide benefits to users other than the person making the payment, and may include contributions such as those by developers to run infrastructure through new subdivisions, by commercial users for providing new capability that benefits other users in the area, and payments from Crown Fibre Holdings to the local fibre companies.

Revenue from operational contributions

109. Our 2015/16 specified information instructions required revenue from operational contributions for building, maintaining and renewing the PTN, to be included as qualified revenue. This could include routine telecommunications service connection fees, maintenance charges and fees for routine changes to a customer's telecommunications service offerings.[45]

110. This approach is consistent with the Act's intent that the TDL covers revenue from providing services based on the PTN, as such revenue is earned (largely) from the existing capability of the PTN to provide service to that customer. This approach is also consistent with NZ GAAP and is equitable, as some operators may recover the cost of these activities via monthly tariffs. To allow some firms to separate out these operational contributions (and exclude them from qualified revenue) would result in inconsistent and inequitable outcomes.

Porting charges

111. We consider that revenue from porting charges (also known as plan change fees) is qualified revenue. These charges are paid when a subscriber changes network provider (ports) but keeps their number. The network provider acquiring the subscriber pays the subscriber's previous network provider a porting charge. This is a wholesale charge and is distinct from any fees that operators may charge retail customers for early termination or changing their monthly or pre-pay plans.

112. As network providers earn this revenue from the day-to-day operations of their networks, we consider that it is earned by means that rely primarily on the existence of a PTN. Therefore, it fulfils the statutory definition of qualified revenue in section 5 of the Act.

113. As this revenue is qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.

[45] Examples include payments to connect a customer to the network when the PTN already passed their property (eg, residential drop leads), and payments to upgrade to a service which was already available to the customer (such as upgrading to ADSL when the customer's exchange was already ADSL capable).

Paper bill charges

114. We consider that revenue from charging customers for paper bills, statements, and invoices that relate to the purchase of telecommunications services is qualified revenue. Some retail service providers surcharge customers for receiving paper bills via the post (rather than receiving emails or using online account management).

115. As network providers earn this revenue from the day-to-day operations of their networks, we consider that it is earned by means that rely primarily on the existence of a PTN. Therefore, it fulfils the statutory definition of qualified revenue in section 5 of the Act.

Satellite revenues

116. Our 2015/16 specified information instructions required QLPs to include in qualified revenue any revenue from telecommunications services provided in New Zealand via satellite. This reflects that the TDL is a revenue based levy, and the services provided using satellite technology are telecommunications services provided by means of a PTN.

117. During the 2011/12 LAD framework development, this issue was raised by Bay City Communications Ltd (Bay City) who provides services using satellite technology. Payments to satellite services providers are not permitted to be deducted at this stage because there are no satellite services providers that are QLPs. If we permitted a deduction for payments for these services, it would be inconsistent with the net revenue approach, and create an inequality with other QLPs who use alternative non-contributing technologies to deliver their services.

Video on-demand

118. We consider that revenue derived from video on-demand content is not qualified revenue. We only consider revenue clearly related to this content exempt, whereas revenue related to the conveyance of this content is qualified revenue.

119. Video on-demand content can be distinguished from broadcasting as it is content provided to a single-user for use at their discretion. Broadcasting revenue is also not qualified revenue as the definition of "telecommunication" defined in section 5 of the Act excludes "any conveyance that constitutes broadcasting."

Private versus public telecommunications network

120. We consider that revenue earned from operating a physically private telecommunications network is not qualified revenue. This is only when the private network is not physically able to connect to another telecommunications network, and is therefore not part of a PTN.

121. We consider that if the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) then revenue that the QLP

derives from providing the services by means of a PTN (or that rely primarily on the existence of a PTN) is qualified revenue.

122. This means that the QLPs do not need to know (or incur the costs of knowing) how their clients use the services they provide. If the QLP derives revenue from providing telecommunications services over a publicly accessible telecommunications network, then it is qualified revenue.

123. This means revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Revenue from fibre or copper dedicated to a single-user is also included in qualified revenue, unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Co-location and co-sited space

124. Our specified information instructions state that revenue from selling co-location services on cellular transmission sites and the co-location of equipment in the PTN environment of the central office must be included in qualified revenue. This is because the co-location revenue is earned by means of a facility that is predominately operated as part of a PTN located in New Zealand.

125. Our 2015/16 specified information instructions provided revised guidance as to what co-location revenue we consider to be qualified revenue. The revision made it clearer that we consider co-location revenue earned from equipment located inside the secured area of PTN facilities to be qualified revenue.

126. Our 2015/16 specified information instructions provided new guidance as to the treatment of revenue from co-siting. This made it clearer that we do not consider revenue from co-sited office and retail space, or hosting commercial data centres that are operated separate from any PTN environment to be qualified revenue. This recognises that premises may be used for both telecommunication and non-telecommunication purposes.

Telecommunications revenue earned by an interconnected body corporate

127. Our 2015/16 specified information instructions included new guidance requiring telecommunication services revenue earned by a body corporate connected to a QLP via section 79 in conjunction with providing telecommunication goods to be included as qualified revenue.

128. This guidance was added to ensure that different corporate structures (eg, having separate subsidiaries to operate the PTN and retail channels) did not result in material inconsistencies in the treatment of revenue from providing bundles of telecommunications goods and services. It also reflects the often close nature of the sale of telecommunication goods and services. An example would be when an interconnected consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.

129. This new guidance ensures that our specified information instructions provide guidance on the treatment of telecommunications services revenue earned by interconnected bodies corporate both in conjunction with providing telecommunications goods (eg, mobile phones) and non-telecommunications goods and services (eg, hotel accommodation). We do not consider the latter to be qualified revenue when it as an ancillary part of providing non-telecommunications goods or services, and the revenues earned are not material to the interconnected bodies corporates' overall revenue.

Telecommunication services revenue earned from an interconnected bodies corporate

130. Our 2015/16 specified information instructions included new guidance making it explicit that a QLP's qualified revenue includes revenue from providing telecommunications services to interconnected bodies corporate (and other related parties) that do not report downstream qualified revenue.

131. This covers situations where a QLP provides services to related parties that consume the services themselves, uses it to earn ancillary revenue as part of providing non-telecommunications goods and services, or earns an immaterial amount of downstream telecommunication services revenue.[46]

132. This new guidance was added to ensure that telecommunications services revenue resulting from related party transactions is included in gross telecommunication revenue, while avoiding double counting of revenue streams.

Other matters: particular expenditures

Fibre network equipment located inside end-user premises

133. We consider that the cost of some fibre equipment, such as optical network terminal (ONT) installed inside the end-user's premises PTN, should not be deducted from qualified revenue. This is because the deduction for the cost of non-telecommunications goods and services does not apply to goods that form part of a QLP's PTN.

Customer loyalty programs

134. The 2015/16 specified information instructions required that payments made to third party operators of customer loyalty programs (such as Fly Buys) should be treated consistently with how the QLP calculated its gross telecommunications services revenue.

135. This requirements avoids the risk of double deductions from having a payment to a third party operator of a customer loyalty program netted off in calculating statutory operating revenue, and deducted as a cost of bundled non-telecommunications goods and services. This approach is consistent with both the relevant outgoing

[46] Respective examples would be a related party that provides consulting services and buys mobile plans for its own staff, a museum that provides wifi to visitors and downstream revenue that is earned overseas as part of a mobile bundle that includes international calling.

account interpretation standard[47] and the incoming NZ IFRS 15. NZ IFRS 15 requires firms to separately identify the revenue associated with customer loyalty programs when calculating operating revenue.

136. We intend to revise our specified information instructions for 2016/17 to update the guidance for customer loyalty programs to recognise that some QLPs may elect early adoption of NZ IFRS 15.

Other matters: Services subject to a pricing review by the Commission

137. Our 2015/16 specified information instructions provided guidance on the treatment of revenues received and payments made in relation to a telecommunications service that is currently subject to one of our pricing reviews. The instructions required that the values for qualified revenue received and for deductions for payments to other QLPs, should reflect the prices charged during the TDL year. To provide further guidance we gave the example of using the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).

138. This guidance provides clarity about the treatment of revenues and expenditure relating to the services covered by our current pricing reviews of the regulated UBA and UCLL services. This guidance is consistent with the existing TDL disclosure principle of correctness that requires that TDL disclosures are in accordance with NZ GAAP (except where otherwise expressly provided).

Other matters: ability of Chorus to pass through the TDL

139. In past consultations, Chorus has raised concerns about its inability to recoup the levy through increased prices, and requested that the Commission allow it to pass on the cost of the TDL levy in prices for its regulated copper services.[48]

140. In developing our TDL methodology, we considered and consulted on the ability of Chorus to pass through the levy in its wholesale prices.

141. As before, we do not consider that the price of regulated services should be determined via the TDL process. We maintain the view presented in our 2011/12 LAD, 2012/13 LAD 2013/14 LAD and 2014/15 LAD that:[49, 50, 51]

> The regulatory regime has separate processes for setting the prices for regulated services, while Chorus is able to set the price for non-regulated services itself. Issues relating to the setting of the price for copper based LLU services and UBA should be considered as part of a separate process under the Act.

47 NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programs.

48 For example, Chorus, *Submission on proposed draft liability allocation under sections 83 and 85 of the Telecommunications Act 20013 for 1 July 2013-30 June 2014*, 28 November 2014 and Chorus, *Submission on draft liability allocation under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2014 to 30 June 2015*, 12 November 2015.

49 Commerce Commission, *2011/12 Final LAD*, paragraph 158, 27 June 2013.

50 Commerce Commission, *2012/13 Final LAD*, paragraph 125, 27 May 2014.

51 Commerce Commission, *2012/13 Final LAD*, paragraph 107, 22 December 2014.

142. On 15 December 2015, we issued our final determinations under the FPP process which set the prices for regulated copper based UBA and UCLL services.[52,53] In doing so we considered the cost of providing these services in accordance with the final pricing principle specified in the Act.

143. In reaching our final decisions for the FPP process, we specifically considered and factored into the regulated prices non-network operating costs, which includes regulatory levies such as the TDL.[54]

Compliance and assurance

144. This section discusses the assurance requirements and compliance review relating to the accuracy of our qualified revenue calculation.

Compliance and assurance for the qualified revenue calculations

145. For the 2015/16 TDL process, we required QLPs to provide us with either:

    145.1 an assurance report by an independent qualified auditor, providing an opinion on the TDL disclosed information; or

    145.2 the statutory audit report if the QLP had gross telecommunications services revenue of under $20m in the 2014/15 TDL year and the requirements detailed in paragraph 153, were met. This threshold also applied to QLPs that were connected to other QLPs via common ownership by the Crown.

146. The Act requires that all information requested under section 83 must be accompanied by a report prepared by a qualified auditor that details the extent to which this information is correct and complete. The Act provides us with discretion in specifying the scope of the auditor's report (the assurance report).

147. Assurance and statutory audit reports prepared by independent qualified auditors provide users with a reasonable level of confidence as to the processes used to prepare information and the reliability of information. An independent auditor is expected to identify and correct deficiencies in processes and information, and provide assurance of its reliability.

148. QLPs' TDL disclosures typically include information that is not presented in the statutory financial statements. This is particularly so for larger QLPs that have more complex TDL disclosures, such as numerous deductions for payments to other QLPs. Therefore, most QLPs' TDL disclosures require additional and separate review by an independent auditor to provide assurance as to the reliability of the disclosed information. Auditors will express their findings from such engagements in the form of an assurance report.

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[52] Commerce Commission "Final pricing review determination for Chorus' unbundled bitstream access service [2015] NZCC 38" (15 December 2015).

[53] Commerce Commission "Final pricing review determination for Chorus' unbundled copper local loop service [2015] NZCC 37" (15 December 2015).

[54] Further information on our treatment of operating costs in our FPP process can be found in Attachment O of our final determination. Refer to *ibid*.

Assurance report requirements

149. Most QLPs provided us with an assurance report that was specific to their TDL disclosures.

150. The overall scope of these assurance reports was the same as for the 2014/15 TDL year. As before, these reports were required to be prepared in accordance with relevant professional auditing standards and to recognise that we and the QLPs' directors are the intended users of the assurance report.

Alternative approach using statutory audit reports

151. The 2015/16 TDL specified information instructions provided some QLPs with the option of providing us with their statutory audit report instead of providing us with a separate assurance report prepared by an auditor for TDL purposes.

152. We introduced this approach in the 2013/14 TDL process to address some QLPs' concerns about compliance costs for smaller QLPs being disproportionately high relative to the levy paid.[55] For the 2014/15 TDL specified information instructions we made a technical revision to reflect changes to the auditing requirements in the Financial Reporting Act 2013 that took effect for periods beginning on or after 1 April 2014.

153. To ensure that there would be an appropriate level of assurance, we set parameters for when we would consider that a QLP's statutory auditor's report met the requirements in section 83(1)(b). This included that:

153.1 the QLP had an unqualified audit opinion;[56]

153.2 the QLP had gross telecommunications services revenue of under $20m in the 2015/16 TDL year;

153.3 the QLP's statutory financial statements covered the full 2015/16 TDL year (ie, 1 July 2015 to 30 June 2016);

153.4 the QLP will make the auditor available to us to answer questions relating to the specified information (if required);

153.5 the statutory financial statements or the notes to the statutory financial statements separately disclose:

153.5.1 the QLP's gross telecommunications services revenue;[57] and

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[55] For example, Northpower*, TDL - submission on draft TDL liability allocation determination for 1 July 2012 to 30 June 2013,* 21 November 2013.

[56] The requirements for an unqualified statutory audit report was that the audit opinion states that QLP's statutory financial present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP as at 30 June 2015, and (of) its financial performance and its cash flows for the year ending 30 June 2015 in accordance with (the applicable financial framework) (or an equivalent level of assurance).

153.5.2 any deduction from gross telecommunications services revenue that is disclosed in Template 1 and that exceeds 1% of the QLP's gross telecommunications services revenue;[58]

154. The following section outlines the compliance review that we conducted during the 2015/16 LAD process.

Our compliance review: general findings

155. We reviewed all information received from QLPs for compliance with the qualified revenue notice. This included checking the disclosures for completeness, the reasonableness of the information provided, and the consistency of how different QLPs addressed comparable issues.

156. Our review identified several issues, which we have raised with the relevant QLPs. These issues were technical in nature, relating to the specifics of the individual QLPs, and therefore did not require consultation. In most cases the QLP provided us with a satisfactory explanation or additional information when requested.

157. Overall the level of completeness and timeliness of disclosures this year was better than in the past, with all, bar one, QLP having provided us with audited templates by the due date. The other QLP provided its audited templates the morning after it was due.

158. Several QLPs spoke to us in advance of the due date to seek guidance on issues. We found this approach improved the process and ensured that these issues did not lead to delays relating to compliance concerns.

159. Our compliance review identified that several QLPs had not fully updated their TDL processes for changes in our instructions on the Excel templates or the names of other QLPs. To help improve compliance in future TDL years, we propose to add data validation checks to our templates to reduce the chance of incorrect information being entered.[59] These revisions will not change the general layout of the templates or the formula used to calculate qualified revenue.

160. The use of a past TDL approach by one QLP, led to us making a material adjustment to its qualified revenue calculation. We discussed the issue with the QLP which confirmed that it had made a mistake and agreed with our revising its qualified revenue. The QLP was cooperative and transparent in resolving the issue.

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57 Where gross telecommunications services revenue is earned by interconnected bodies corporate that prepare their own statutory financial statements, it may be disclosed in the statutory financial statements either as a consolidated value or as bodies corporate specific values in the individual statutory financial statements.

58 This applies to total payments made to other QLPs; total payments made to non-QLPs for services initially provided by a QLP; and total cost of non-telecommunications goods and services included in gross telecommunications services revenue.

59 For example, we propose to add a combo box to template 2 where QLPs can claim deductions for payments to other QLPs. The change will require QLPs to select the "other QLP" from a set list rather than enter the QLP's name as freeform text. This will prevent QLPs entering invalid names.

161. We expect that after we inform a QLP of its non-compliance, the QLP will take steps to improve its compliance in the future. Should a QLP repeat a known mistake in a later TDL year, we may take formal enforcement action. Our enforcement options include issuing a warning letter, issuing an infringement notice incorporating a fine, or taking Court proceedings seeking a financial penalty.

Our compliance review: adoption of new accounting standard

162. Subsequent to our issuing our draft LAD, Trustpower published midyear financial statements for 2016/17 that included restated values for 2015/16 due to Trustpower's early adoption of the new accounting standard NZ IFRS 15. This included restating some values that were inputs in calculating its qualified revenue. Some revisions related to the treatment of revenue received from customers who bought bundles of telecommunications and non-telecommunication utility services.

163. As part of our compliance review we discussed this with Trustpower and agreed that Trustpower should submit revised schedules based on the restated financial statements. We consider that Trustpower’s early adoption of NZ IFRS 15 better recognises the underlying revenue it earns from providing telecommunications services, and hence better meets the specified information instruction disclosure principle of "objectivity".

164. As Trustpower's initial disclosure had been prepared consistent with an earlier, but still in force accounting standard, and Trustpower voluntarily chose to be an early adopter of NZ IFRS 15, we do not consider that this situation gives rise to a compliance issue. However, as noted earlier in this final LAD, we intend to update our specified instruction for 2016/17 to require QLPs to adopt the principles of NZ IFRS 15 when allocating revenue and associated bundle discounts earned from bundles of telecommunication services with non-telecommunications goods and services for which we currently do not provide specific guidance.

Allocation of levy

165. The proportion of the TDL required to be paid by each QLP is determined by its share of the total qualified revenue earned by all QLPs for the TDL period.

166. In accordance with section 88(1)(a) and (b) of the Act, the following table shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

Table 1: Levy allocation

QLP	Qualified revenue ($)	% of industry qualified revenue	Amount of TDL to pay ($)
Spark	$1,600,312,346	37.76%	$18,880,604.07
Vodafone	$1,111,417,170	26.23%	$13,112,582.43
Chorus	$938,780,982	22.15%	$11,075,807.84
2degrees	$307,257,000	7.25%	$3,625,040.94
Vocus	$143,455,255	3.38%	$1,692,495.77
Teamtalk	$38,999,239	0.92%	$460,115.93
Vector	$24,090,594	0.57%	$284,222.62
Ultrafast Fibre**	$21,527,000	0.51%	$253,977.15
Enable Networks**	$14,457,000	0.34%	$170,564.76
Kordia**	$13,970,141	0.33%	$164,820.77
REANNZ**	$8,554,000	0.20%	$100,920.73
Compass*	$5,015,000	0.12%	$59,167.34
Trustpower*	$4,309,000	0.10%	$50,837.90
Northpower**	$3,929,000	0.09%	$46,354.63
Transpower**	$1,906,000	0.04%	$22,487.13
Total Industry	$4,237,979,728	100%	$50,000,000.00

* A firm with an operating revenue over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

**s 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL. However, they provided separate disclosures, so their TDL allocations are displayed separately.

Attachment A – 2015/16 TDL Specified Information and Assurance Report Instructions

Introduction and Interpretation

Introduction

1. These instructions provide guidance for parties seeking to comply with the information disclosure requirements under section 83 of the Telecommunications Act 2001 (Act).

2. Each year the Commerce Commission (Commission) identifies a group of telecommunications service providers (TSPs) who meet the criteria set out in subpart 2 of Part 3 of the Act and are therefore liable to pay a portion of the annual Telecommunications Development Levy (TDL). We refer to such TSPs as qualifying liable persons (QLPs).

3. In order to meet the QLP criteria a TSP must:

    3.1 provide a telecommunications service in New Zealand by means of operating a component of a Public Telecommunications Network (PTN); and

    3.2 have earned at least $10 million gross telecommunications services revenue in the year preceding the TDL year under review by means of its PTN, or by means that rely primarily on the existence of its or any other PTN, including such revenue of any bodies corporate that were connected to it in any of the ways described in section 79(1)(a) to (e) of the Act (interconnected bodies corporate).

4. The list of QLPs for the 2015/16 TDL year is based on information provided to date and is available on our website. The list is not final, and may be reviewed and updated if required.

5. Section 83 of the Act requires QLPs to produce information for purposes of the Commission's liability allocation determination. Under section 83(1)(a), the Commission may specify the information it needs for the purpose of enabling it to make its determination in accordance with section 88(a) of the Act. Under section 83(1), the specified information is due 60 working days after the end of a TDL year (around the end of September). Each QLP is required to provide us with specified information to enable us to determine their qualified revenue for the TDL year under review as required by section 88(a). We use this information less a few important deductions (identified by these instructions) to determine the QLP's net qualified revenue. This net qualified revenue is then used to allocate the TDL in accordance with section 88(b) of the Act. We refer to this information as "specified information" and to this process as "the qualified revenue information disclosure process".

6. These instructions provide guidance on what the specified information required under section 83(1)(a) includes and how it is to be presented.

7. Along with these instructions and the list of QLPs, a set of templates and relevant statutory references are available on our website. We recommend that QLPs utilise these materials as they have been designed to meet our requirements. Specific instructions for using the templates are provided in this document.

8. Under section 83(1)(b), QLPs are also required to provide us with a report by an auditor on the specified information that meets the requirements under section 83(2). These instructions also explain when we will consider that the requirements in section 83(2) have been met.

Interpretation

9. Specified information includes all information used to identify a QLP's qualified revenue.

10. Unless the context otherwise requires, QLP includes all interconnected bodies corporate.

11. PTN means a PTN in New Zealand, as defined in section 5 of the Act.

12. Qualified revenue is the amount of revenue that, during the 2015/16 financial year (1 July to 30 June), the QLP received from supplying all or any of the following:

    12.1 telecommunications services by means of its public telecommunications network (PTN); and/or

    12.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

13. Qualified revenue does not include any amount paid by the Crown to a QLP as compensation for the cost of complying with a TSO instrument that contains a specified amount. This type of revenue is expressly excluded in the definition of qualified revenue in section 5 of the Act.

14. Qualified revenue also excludes non-telecommunications services revenue (such as broadcasting), payments for telecommunications services between QLPs and in some specific circumstances payments to non-QLPs for telecommunications services purchased from another QLP.

15. Telecommunications services (as defined in section 5 of the Act) mean only services (rather than goods, equipment and facilities), as goods, equipment and facilities cannot be supplied by means of a PTN or by means that rely primarily on the existence of a PTN.

16. All specified information used to identify qualified revenue must be calculated on an accruals basis.

17. For the purpose of these instructions, 'end-user equipment':

17.1 means any or all handsets, tablets, USB modems, other consumer equipment, and business and other office end-user equipment; and

17.2 does not mean equipment that is located inside the end-user's premises but which forms part of a QLP's PTN. For the avoidance of doubt, optical network terminals (ONT) installed inside the end-users' premises, external termination point (ETP) and internal termination points (ITPs) that are part of a QLP's PTN are not end-user equipment for the purpose of these instructions.

18. For the purposes of these instructions, an auditor means, in relation to any information, a person who:

18.1 is qualified for appointment as auditor under the Companies Act 1993 (or successor legislation), or is an auditor appointed by the Auditor-General;

18.2 has no relationship with, or interest in, the QLP that is likely to involve the person in a conflict of interest;

18.3 has not assisted with the compilation of the information or provided advice or opinions (other than in relation to audit reports or in respect of the interpretation of this determination) on the methodologies or processes used in compiling the information; and

18.4 is not associated with nor directed by any person who has provided any such assistance, advice, or opinion.

Operational changes for QLPs

19. The Commission acknowledges that there will be situations where a QLP may cease trading during a financial year, or cease to operate the telecommunications component of its business.

20. If a QLP ceased trading or operating a component of a PTN in the 2015/16 financial year, it will continue to have liability for the TDL in that year. This is because the QLP would have met the qualifying criteria in the preceding financial year, and will have some qualified revenue for the 2015/16 year. Only the revenue earned during the period that the provider was a liable person (as defined in section 5 of the Act) is counted as qualified revenue.

Instructions for preparing specified information to identify a qualifying liable person's qualified revenue for purposes of the Telecommunications Development Levy

Disclosure principles

21. Except where otherwise expressly provided, all information provided to the Commission in accordance with these instructions must be prepared in accordance with the following principles.

    21.1 Correct: the information has been prepared by the QLP in all material respects in accordance with these instructions, and disclosure must occur in accordance with New Zealand generally accepted accounting practice (NZ GAAP).

    21.2 Complete: the QLP has provided all the information requested, in an appropriate format.

    21.3 Objectivity: the QLP must apply regulatory reporting processes which are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data must be documented in such a way that an informed reader can easily judge their reasonableness.

    21.4 Consistency: the QLP must treat similar types of information consistently, both within a reporting year and from year to year.

    21.5 Data retention: the QLP must retain copies of all documentation detailing the processes related to information disclosed for seven years.

Instructions for completing the templates

<u>Template 1: Consolidated Return & Qualified Revenue Calculation</u>

22. Template 1 requires the QLP to:

    22.1 provide information about whether the disclosure is a consolidated return which applies to more than one QLP and/or includes bodies corporate that earned qualified revenue and were connected to the QLP via section 79; and

    22.2 provide a calculation of the QLP's qualified revenue for the 2015/2016 financial year.

Template 1a: Consolidated Return

23. Under the heading 1a: Consolidated return for Section 79 purposes, the QLP is required to identify in the drop-down box, if it is filing a consolidated return. If so, the QLP must list which parties are included in the consolidated return. Section 79 identifies when two or more bodies corporate are required to be treated as one

person.[60,61] The List of QLPs (on our website) indicates whether the QLP includes interconnected bodies corporate, and if so who such bodies are.

Template 1b: Qualified Revenue

24. To calculate its estimate of qualified revenue, the QLP must first calculate its gross telecommunications services revenue., This is the QLP's operating revenue:

    24.1 less any non-telecommunications services revenue, and

    24.2 allowing for any timing adjustments which arise should the QLP have a statutory year end which differs from the financial year ending 30 June 2016 that is used for calculating qualified revenue.

25. The QLP must then net off from the gross telecommunications services revenue total, the following items:

    25.1 the total of any payments made to other QLPs (which is calculated in Template 2);

    25.2 the total of any payments made to non-respondents for services initially provided by a respondent (which is calculated in Template 3); and

    25.3 in specified circumstances, the cost of any non-telecommunications goods and services (eg, handsets in discounted bundles with telecommunications services) for which the revenue is included in gross telecommunications services revenue.

26. The QLP's qualified revenue for the 2015/16 financial year is calculated in accordance with the formulas in Template 1, which are summarised in Table 1.

27. Table 1 is provided to assist the QLP calculate its qualified revenue and as such, is for information and explanation purposes only. The information required to be provided to the Commission is that set out in Template 2.

[60] For example, section 79(1)(e) of the Act provides that any two or more bodies corporate must be treated as one person if a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

[61] Crown owned entities may each provide the specified information specific to their entity (and any subsidiaries or like). This approach is to facilitate lower compliance costs and recognises how entities linked via common ownership by the Crown operate.

Table 1: Calculating Qualified Revenue

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$ a	
b		Non-telecommunications services revenue (if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

Calculating gross telecommunications services revenue

28. To calculate the gross telecommunications services revenue (step f), the QLP must, amongst others, identify the following features.

28.1 In step (a), the operating revenue, the relevant statutory financial statements are the QLP's most recent statutory financial statements (or equivalent information if the QLP does not publish statutory financial statements) that have the greatest overlap with the financial year ending 30 June 2015. For a QLP with a 31 December year end, the operating revenue is determined for the period ending 31 December 2015.

28.2 In step (d), the value of total non-telecommunications services revenue is the sum of the disaggregated major non-telecommunications revenue streams individually disclosed in step (b) under the heading 'non-telecommunications services revenue (if any)', and the value of any other revenue streams that are disclosed in aggregate in step (c) as 'other non-telecommunications services revenue'. These are calculated in the following manner.

28.2.1 Under the heading, 'non-telecommunications services revenue', the QLP must disclose each of its major disaggregated non-telecommunications revenue streams.[62] When the information is reasonably available and appropriate, the QLP must use the revenue types listed in Attachment A.[63] If this information is not readily available, then the QLP must provide sufficient detail so that an informed reader can reasonably identify the major activities that generate the non-telecommunications services revenue.

[62] In subtracting any non-telecommunications services revenue, QLPs must consider the treatment of revenue from providing telecommunications services to non-liable persons that are interconnected bodies corporate (or other related parties). Refer to page 6 of Attachment A for further details.

[63] Such as revenue derived from outside New Zealand, revenue earned from the standalone sales of handsets and other end-user equipment, and revenue earned from non-telecommunications products that were not bundled with telecommunications services.

28.2.2 Under the heading, 'other non-telecommunications services revenue' the QLP may disclose the non-telecommunications services revenue earned from minor activities as a combined value. This value must not exceed 2.5% of the QLP's operating revenue as disclosed in step (a).[64]

28.2.3 The values deducted for non-telecommunications services revenue must be consistent with those used in calculating operating revenue as per the relevant statutory financial statements.

29. Step (e), the 'timing adjustment', is only required if the QLP has a statutory year end other than 30 June. This allows the QLP to make adjustments for the effect of both:

29.1 the statutory financial statements reporting operating revenue for a different period than the TDL financial year ending 30 June, and

29.2 estimates of when revenues and costs should be recognised for TDL purposes.

30. If the timing adjustment results in either an increase or decrease in gross telecommunications services revenue, it should have a corresponding positive or negative value.

31. The timing adjustment will typically represent the effect on gross telecommunications revenue of differences in the revenue periods under the statutory financial statements and the TDL financial year.[65] It may also include some of the adjustments relating to past assumptions about timing, which were made in accordance with paragraph 29.2, which relate to:

31.1 estimates of gross telecommunications services revenue (step (f));

31.2 total payments made to other QLPs (step (g));

31.3 total payments made to non-QLPs for services initially provided by a QLP (step (h)); and

31.4 total cost of non-telecommunications goods and services included in gross telecommunications services revenue (step (i)).[66]

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64 The option of disclosing revenue earned from these minor activities as a combined 'other' value, rather than separate line items, is provided to reduce the company's compliance costs. The 2.5% threshold exists to provide transparency in the calculation.

65 For example, if a QLP with a 31 March year end earned $10m more telecommunications services revenue in the quarter ending 30 June 2015 than it did in the quarter ending 30 June 2015, the timing adjustment would be $10m.

66 For example, if a QLP with a March year end, in its TDL year 1 templates assumed that the revenue from a shipment of handsets sold in April was included in the March statutory financial statements, later recognises the sale as an April transaction, could address this as a timing adjustment in TDL year 2. Whether this effect is disclosed as a timing adjustment or addressed elsewhere on template 1 depends on how the QLP calculates the values in template 1.

32. The QLP must provide explanations of any material differences between the revenue disclosed in the most recent statutory financial statements and the revenue disclosed in Template 1, that are not due to the timing adjustment in step (e).

33. If the QLP does not have separate statutory financial statements, it must disclose the total audited revenue of its business for the financial year and reconcile this to the gross telecommunications services revenue disclosed in step (f).

Deducting the cost of non-telecommunications goods and services

34. If revenue from non-telecommunications goods and services can be identified separately it must be deducted at step (b). If revenue from these non-telecommunications goods and services is not reasonably identifiable (such as when they are sold through the QLPs website or own retail stores (direct channels) in a discounted bundle with telecommunications services) then the Commission will permit a QLP to deduct the cost of purchasing these goods or services in step (i).

35. For the cost of these non-telecommunications goods and services to be deducted, the associated revenue must be included in the gross telecommunication services revenue total at step (f). This could include the cost of end-user equipment (such as handsets and modems), broadcasting services and video on-demand content that were provided by the QLP in a bundle with telecommunications services. Typically this means the entire revenue value of the bundle is included in the total at step (f).

36. The cost of these non-telecommunications goods and services must be disaggregated into one of the four categories listed in Template 1b and calculated in the following manner.

    36.1 For end-user equipment that was sourced in New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

    36.2 For end-user equipment that was sourced outside New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP, plus direct freight costs and customs duties.

    36.3 For broadcasting services and video on-demand content, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

    36.4 For other non-telecommunications goods and services that were sold as part of a bundle with telecommunications services, the directly attributable costs in accordance with NZ GAAP. This category is likely to include services such as maintenance services, which were sold as part of a bundle with telecommunication services.

37. For the avoidance of doubt, in step (i) the cost of non-telecommunications goods and services:

37.1 can only be deducted at this point if the associated revenue could not reasonably have been identified and deducted as non-telecommunications services revenue at step (b);

37.2 can only be deducted if the associated revenue was included in the QLP's gross telecommunications services revenue;

37.3 must not include any allocation of corporate overhead, charges for the cost of capital, or mark up for indirect costs;[67]

37.4 (for non-telecommunications goods specifically) can only be deducted if at the time when the associated revenue transaction occurred, the QLP had legal ownership of the goods; and

37.5 (for a non-telecommunications goods specifically) cannot be the price charged by a party (eg, retailer) who had purchased the same good in a previous transaction from the QLP; if the QLP had repurchased the good from such a party, then the revenue from the first sale must be fully reversed in calculating gross telecommunications revenue, and the cost of the non-telecommunications good must be set at the original cost the QLP incurred in acquiring it as allowed under paragraphs 36.1 and 36.2.

Changes in accounting practices and the treatment of estimates

38. In calculating qualified revenue, the QLP must make reasonable efforts to ensure that the reported value of its qualified revenue is accurate both within a year and in aggregate across years. This includes, but is not limited to:

38.1 when a change in accounting practices impacts on when revenues or costs are recognised, the QLP must make reasonable efforts to ensure that the affected qualified revenue is disclosed in the year that the change in accounting policy is made, or failing that in the year when the revenue or cost is first recognised; and

38.2 when a QLP with a statutory year end other than 30 June makes estimates as to which of two TDL financial years an item of revenue (or cost) should be recognised in, then the QLP must make reasonable efforts to ensure that a revenue (or cost) item, if not recognised in the first of the two TDL financial years, is recognised in the later of the two TDL financial years, regardless of how it is recognised for other purposes.

39. For the avoidance of doubt, paragraph 38.2 may result in the timing recognition of revenue or input costs for TDL purposes being different to that used for statutory reporting under NZ GAAP or other reporting requirements.

[67] These accounting practices are specific to these instructions and the calculation of qualified revenue for TDL purposes. This should not be taken as guidance for compliance with any other notice, determination or other requirements issued by the Commission.

Template 2: Payments Made to Other QLPs

40. This template requires the QLP to disclose the total amount payable to other QLPs that is being deducted in accordance with these instructions for the 2015/16 financial year.

41. Amounts payable to each of the QLPs to whom payments are made must be disclosed separately.

42. Deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

Template 3: Payments Made to Non-QLPs for Services Originally Purchased from a QLP

43. The QLP can deduct payments made to a non-QLP for telecommunications services, but only if that non-QLP is acting as an intermediary for another QLP, ie, payments to a non-QLP for the provision of telecommunications services that the non-QLP purchased from another QLP.

44. The intention of this exception is to deal with situations where a non-QLP is effectively acting as an intermediary between a liable upstream provider and a liable downstream provider of telecommunications services. This is likely to be rare and the Commission needs to be convinced that any deduction claimed is genuine.

45. Again, deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

46. Template 3 requires the QLP to disclose details about payments claimed in Template 1 (step (h)) as a deduction for payments made to non-QLPs for services originally purchased from another QLP in the 2015/16 financial year.

47. To claim a deduction in Template 3, the QLP is required to provide:

    47.1 the name of the non-QLP(s) from whom it purchased the services;

    47.2 the QLP(s) the non-QLP(s) purchased the services from originally;

    47.3 a description of the service(s) provided;

    47.4 the value of transaction(s) and the allocated value of the payments deducted from the qualified revenue.

48. Any allocations are to be calculated in accordance with the principles in paragraph 21. The value of transactions(s) should reconcile to invoices and must include both the allocated value deducted for TDL qualified revenue and non-deductible amounts (such as payments for non-telecommunications services).

Template 4: Information for bodies corporate that earned qualified revenue and were connected to liable persons via section 79

Background

49. This template requires the QLP to disclose whether or not it is connected to one or more bodies corporate that earned qualified revenue, and if so to provide further details.

50. Section 79(1) of the Telecommunications Act 2001 provides that two or more bodies corporate must be treated as one person, for purposes of the TDL, if:

    (a) one of them is a body corporate of which the others are subsidiaries; or
    (b) all of them are subsidiaries of the same body corporate; or
    (c) all of them are associates of each other; or
    (d) one of them owns or controls shares that in the aggregate carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of the others; or
    (e) a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

51. Section 79(2) provides that for the purposes of section 79(1)(c) a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

52. If a body corporate is connected via section 79 to a QLP and that body corporate earned qualified revenue, then that revenue must be included in the qualified revenue disclosures irrespective of whether the connected body corporate is, or is not, itself a liable person.

Assessing any connected body corporate's qualified revenue

53. The QLP should consider if any of the provisions of section 79(1) apply and, if it is connected to another body corporate, whether such body corporate earns qualified revenue.

54. If a body corporate connected to a QLP via section 79(1) earns revenue from telecommunications services that is ancillary to providing other goods or services and that revenue is not material to its overall revenue, then that revenue is not qualified revenue. For example, if the body corporate is a hotel that earns some ancillary revenue from providing telecommunications services to guests.

55. If, for the QLP, there were no bodies corporate connected via section 79, or if such connected bodies corporate did not earn qualified revenue, then for template 4, the QLP is only required to answer the question in section 4a (by answering 'no' in the white input cell). Otherwise the QLP must answer 'yes' in section 4a and complete section 4b.

If a body corporate is connected to multiple QLPs

56. If the QLP is connected via section 79, to bodies corporate that earn qualified revenue, then the QLP should consider if one or more of those bodies corporate is also connected to another QLP. If the latter applies, then:

    56.1 only one of the QLPs must provide further specified information for each body corporate (for example including the connected body corporate's qualified revenue in its estimation of group qualified revenue in template 1).

    56.2 the other connected QLP(s) must declare the connection by answering "yes" in section 4a and providing further details in section 4b of template 4.

57. Therefore, the QLP may need to agree with other QLPs connected to the same bodies corporate, who provides further specified information for such bodies. This will include determining who is responsible for disclosing financial information (such as templates 1 to 3) about the bodies corporate.

58. In the case of QLPs who are connected to other QLPs via common ownership by the Crown, they may complete templates 1 to 3 as separate QLPs; and note that they are connected to the other Crown owned QLPs via section 79, in section 4b of template 4 with the entry 'Other Crown owned QLP(s)' in the first column of the table.

The qualified revenue status of common revenue streams

59. In general, telecommunications services can be divided into two groups; voice services, and data services. This reflects the definition of the network these services are to be provided over. PTN is defined in the Act as meaning "a network used or intended to be used, in whole or in part, by the public for the purposes of telecommunication" including a public switch telephone network (PSTN) and a public data network (PDN).

60. Voice services are generally those services provided over a PSTN, and what is captured in this category is largely unchanged from the previous TSO cost allocation processes. Common types of voice based telecommunication services include:

    60.1 local and residential telephone services;

    60.2 long distance direct dial and toll calls; and

    60.3 calling cards.

61. Data services are generally those services provided over a PDN. Common types of data based telecommunications services include:

    61.1 mobile broadband services;

    61.2 business data services; and

61.3 xDSL services, naked DSL services and services provided using an unbundled copper local loop.

62. Further information on the qualified revenue status of common types of voice and data telecommunications services is provided in Attachment B.

What does not constitute qualified revenue for the purposes of these qualified revenue instructions?

63. Revenue earned from international transit arrangements for calls neither originating nor terminating in New Zealand is not qualified revenue.

64. Revenue earned from the provision of end-user equipment (including handsets discounted or otherwise) is not qualified revenue as it is not revenue from the supply of telecommunications services by means of the QLP's PTN or the supply of telecommunications services by means that rely primarily on the existence of the QLP's or any other PTN.

65. Any revenue received by a QLP from the Crown as compensation for the cost of complying with a TSO instrument containing a specified amount, is not included in the calculation of qualified revenue.

66. Revenue from providing broadcasting is not qualified revenue. The definition of 'telecommunications' in section 5 of the Act excludes "any conveyance that constitutes broadcasting."

67. Revenue derived from video on-demand content is not qualified revenue. Video on-demand is distinguished from broadcasting as it is provided to a single-user for use at their discretion. Furthermore, video on-demand content revenue is distinguished from conveyance revenue, and only revenue related to the conveyance of this content is qualified revenue.

68. Receipts from capital contributions that were made towards assets which develop the PTN are not qualified revenue if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. The value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under NZ GAAP.

69. Where a non-liable person body corporate connected to a QLP via section 79 provides services related to telecommunications as an ancillary part of providing other goods or services, and the revenues earned from that service are not material to their overall revenue, such revenues are not qualified revenue.

Qualified revenue and the public telecommunications network

70. Revenue earned from operating a physically private telecommunications network (a network that is not physically able to connect to another telecommunications network) is not qualified revenue. If the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) the revenue the QLP derives from providing the telecommunications service is qualified revenue.

71. This means that a QLP is not required to know how their clients use the services they provide. If the QLP obtains revenue from providing telecommunications services by means of its PTN or that rely primarily on the existence of a PTN then that revenue is qualified revenue.

72. Therefore, revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Fibre or copper dedicated to a single-user is also included unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Instructions for preparing assurance report on specified information

Assurance report requirements

73. The QLP must provide to the Commission an assurance report by an independent qualified auditor (auditor) in respect of the specified information.[68,69]

74. The assurance report must:

    74.1 Be addressed to the directors of the QLP and to the Commission as the intended users;

    74.2 State that it has been prepared in accordance with Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000), or International Standard on Auditing (New Zealand) 805 Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of A Financial Statement, or their successor standards; and

    74.3 State whether or not in the auditor's opinion the information provided by the QLP in templates 1 to 4 is prepared in all material respects in accordance with these instructions.

Criteria for when an audit report will be considered as meeting section 83(1)(b)

75. The Commission will consider that an auditor's report prepared for the QLP's statutory financial statements meets the requirements in section 83(1)(b) (and hence we will not require the QLP to provide a separate assurance report), if:

    75.1 The QLP had gross telecommunications services revenue of under $20,000,000 in the 2015/16 TDL year;[70]

    75.2 The QLP's statutory financial statements cover the full 2015/16 TDL year (ie, 1 July 2015 to 30 June 2016);

    75.3 The QLP will make the auditor available to the Commission to answer questions relating to the specified information (if required);

    75.4 the statutory financial statements or the notes to the statutory financial statements separately disclose:

        75.4.1 the QLP's gross telecommunications services revenue;[71] and

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68 Section 83(1)(b) read with section (2) of the Act requires QLPs to provide the Commission with a report from a qualified auditor that includes a statement of the extent to which the information provided under section 83(1)(a) is correct and complete.

69 An exception is allowed under paragraph 75 where an auditor's report for the statutory financial statements may be provided instead if certain criteria are met.

70 This $20,000,000 threshold also applies to QLPs who are connected to other QLPs via common ownership by the Crown, but who elect to complete separate TDL disclosures in accordance with paragraph 58.

75.4.2 any deduction from gross telecommunications services revenue that is disclosed in template 1 and that exceed 1% of the QLP's gross telecommunications services revenue;[72]

75.5 The auditor's report:

75.5.1 was prepared in accordance with International Standards on Auditing (New Zealand) or equivalent or successor standards; and

75.5.2 contains an audit opinion that states that the QLP's statutory financial statements present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP as at 30 June 2016, and (of) its financial performance and its cash flows for the year ending 30 June 2016 in accordance with (the applicable financial framework) (or an equivalent level of assurance).

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[71] In the case of gross telecommunications services revenue that is earned by interconnected bodies corporate that prepare their own statutory financial statements, gross telecommunications services revenue may be disclosed in the statutory financial statements either as a single consolidated value or as bodies corporate specific values in the individual statutory financial statements.

[72] This applies to total payments made to other QLPs; total payments made to non-QLPs for services initially provided by a QLP; and total cost of non-telecommunications goods and services included in gross telecommunications services revenue.

Attachment B – Qualified revenue status of common types of revenue

Revenue stream	Rationale	Status
Revenue from building, maintaining and renewing network infrastructure	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a public telecommunications network (PTN) or by means that rely primarily on the existence of the PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the QLP accordingly under NZ GAAP is qualified revenue. This because it is part of the telecommunications service provided by means of a PTN. Receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. This is because the building, maintaining and renewing activity is significant enough to define it as the creation of an asset rather than the operation of one. However, the value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under GAAP.	Operational revenue is qualified revenue and receipts from capital contributions are legitimate deductions.
Revenue from the sale of mobile phone handsets that is not recovered through mobile access or calling charges (ie, sold separately)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act.	Non-qualifying telecommunications services revenue.
Revenue from the sale of mobile phone handsets recovered through mobile access or calling charges (sold as part of services provided in a bundle)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act. Due to difficulties in identifying the true value of this revenue stream, the Commission has allowed QLPs to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	Non-qualifying telecommunications services revenue.
Revenue derived from services provided in other countries	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a PTN operated in New Zealand. These services fall outside	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	the definition of qualified revenue.	
Expenditure on purchasing telecommunications services from other QLPs	The Commission considers that the avoidance of double counting of revenue is a concern and allows a deduction for this type of expenditure as the value of the service is picked up in the QLP providing the service.	Legitimate deduction.
Expenditure on purchasing telecommunications services from a non-QLP that on-sells those services it purchased from another QLP	The Commission considers that this situation is analogous to purchasing services from another QLP directly. QLPs can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	Legitimate deduction.
Prompt payment discounts and credits for billing errors and omissions	The Commission allows deductions for prompt payment discounts and credits for billing errors and omissions as this allows the QLP to represent their true revenue totals.	Legitimate deduction.
Revenue from calling cards and prepay credits	The Commission considers all calling card and prepay credit revenue, whether used or expired is qualified revenue as it was acquired for the purposes of providing a telecommunications service .	Qualified revenue.
Inbound roaming revenue	The Commission considers that revenue from inbound roaming is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile access and calling revenue	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is qualified revenue.	Qualified revenue.
Revenue earned from voice over IP calls that terminate or originate on a PSTN (PTN)	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice calls and SMS	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from toll by-pass/ direct dial calls by the QLP	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.

Revenue stream	Rationale	Status
Revenue earned by the QLP from late payment fees levied on customers for the late payment of outstanding accounts for telecommunications services	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from dial-up ISP service (Including modem banks)	Revenue from telecommunications services using a PTN is captured – PTN includes public data networks (PDN) and this service is captured under the PDN definition.	Qualified revenue.
xDSL services, Naked DSL services and services provided using a UCLL	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	Qualified revenue.
Business data services	Revenue from business data telecommunications services using a PTN is captured.	Qualified revenue.
Revenue derived from the supply of video on-demand content	The Commission considers that video on-demand content revenue is not captured as a telecommunications service as it can be distinguished from the conveyance revenue which is the intended focus of the definition of telecommunications services.	Content revenue is non-qualifying telecommunications services revenue, and conveyance revenue is qualified revenue.
Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a QLP's client uses it for a private purpose is not relevant to its qualified revenue status.	Qualified revenue.
Broadcasting services	The definition of 'telecommunications' in section 5 of the Telecommunications Act expressly excludes broadcasting.	Non-qualifying telecommunications services revenue.
Dark fibre, layer one, two and above services	Revenue from telecommunications services using a PTN are captured – revenue from providing telecommunications services by means of a PTN are captured regardless of the	Qualified revenue.

Revenue stream	Rationale	Status
	ISO layer.	
Satellite revenues	Telecommunications services provided in New Zealand via a satellite are supplied by means of the qualifying liable person's PTN.	Qualified revenue.
Revenue from selling customer premises equipment	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	Non-qualifying telecommunications services revenue.
Revenue from dumb caches, content delivery networks (CDN)	Revenue derived from operating this equipment relies on the existence of a PTN and is therefore within the definition of qualified revenue.	Qualified revenue.
Revenue from fibre dedicated to a single-user	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services.	Qualified revenue.
Revenue from early termination charges (telecommunications services revenue)	Early termination charges revenue derived from services or bundles of services that are all telecommunications services is qualified revenue. Early termination charges revenue derived from a bundle that includes end-user equipment which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is deducted (or had been deducted in a previous TDL year) from gross telecommunications services revenue is qualified revenue. This avoids the problem of a QLP deducting both the cost of equipment while not recognising the matching revenue when calculating qualified revenue	Qualified revenue.
Revenue from early termination charges (non-telecommunications revenue)	Early termination charges revenue derived from a bundle that includes non-telecommunications revenue (eg, end-user equipment), which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is not deducted (or has not been deducted in a previous TDL year) from gross telecommunications revenue, is not qualified revenue (to the extent it relates to the non-telecommunications equipment). This recognises that it relates to non-telecommunications equipment for which the cost had not	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	been deducted when calculating qualified revenue.	
Revenue from porting charges (also known as plan change fees)	The Commission considers that this is revenue from the day to day operations of a PTN and is therefore qualified revenue. As these charges are qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.	Qualified revenue.
Revenue from co-location	Revenue earned from co-location on cellular transmission sites (as the term is used in Schedule 1 of the Act) or co-location of equipment in the PTN environment of the central office is captured as it is earned from the use of those facilities as part of a PTN. For example, revenue from the co-location of telecommunications equipment that is located in a secured area of the PTN facilities is qualified revenue.	Qualified revenue.
Revenue from co-sited office and retail space, or hosting commercial data centres.	Revenue earned from renting office and retail space in a premise that is also used for providing telecommunication services is not captured. Revenue from operating commercial data centres is not captured provided that it is operated separate from any PTN environment, sharing the same premises. For example, revenue from operating a server farm that is on the distribution side of a MDF (main distribution frame) or ODF (optical distribution frame) of a central office building is not qualified revenue. This recognises that premises may be used for both telecommunication and non-telecommunication purposes.	Not qualified revenue.
Ancillary revenue, earned by non-liable persons that are bodies corporate connected to a QLP via section 79 as an ancillary part of providing non-telecommunications goods and services.	The Commission considers that such revenue is not qualified revenue. This is where a non-liable person body corporate provides telecommunications services as an ancillary part of providing non-telecommunications goods or services, and the revenues earned from that service are not material to their	Not qualified revenue.

Revenue stream	Rationale	Status
	overall revenue.	
Telecommunications services revenue earned by non-liable persons that are bodies corporate connected to a QLP via section 79 in conjunction with providing telecommunications goods.	The Commission considers that such revenue is qualified revenue. This is where a non-liable person body corporate provides telecommunications services in conjunction with or as an ancillary part of providing telecommunications goods, For example, when a consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.	Qualified revenue.
Telecommunications services revenue earned by a QLP from providing telecommunications services to a non-liable person that is a body corporate connected to a QLP via section 79 (or another related party) when the non-liable person does not report downstream qualified revenue.	The Commission considers that such revenue is qualified revenue and should be valued in accordance with NZ GAAP. This is where a QLP provides telecommunication services to a non-liable person that is a body corporate connected to a QLP via section 79 (or another related party) and that person consumes the services itself, uses it to earn ancillary revenue as part of providing non-telecommunications goods and services, or earns an immaterial amount of downstream telecommunication services revenue (for example, the downstream revenue is earned overseas as part of a mobile bundle that includes international calling). This seeks to ensure that telecommunications services revenue resulting from related party transactions is included in gross telecommunication revenue, while avoiding double counting of revenue streams.	Qualified revenue. For a QLP that completes the row ‘statutory operating revenue as per the relevant financial statements’ of template 1 using group consolidated operating revenue, this may require reducing the value of the deduction for non-telecommunications services revenue. This adjustment would equal the value of the QLP’s telecommunicates services revenue that was eliminated on consolidation and for which the non-liable person does not report downstream qualified revenue.
Revenues received and payments made in relation to a telecommunications service that is currently subject to a pricing review by the Commission.	The values for qualified revenue received and for deductions for payments to other QLPs, should reflect the prices charged during the TDL year. For example, the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).	n/a

Revenue stream	Rationale	Status
Indefeasible right to use (IRU)	The Commission considers that QLPs may not deduct the cost of purchasing an IRU to use a segment of (dark) fibre for a specified period when under NZ GAAP the IRU should be treated as an asset. This reflects that IRUs are typically treated as non-current assets that are depreciated over time, and not as operating expenses.	Not deductible.
Payments relating to customer loyalty programs run by a third party	The treatment of payments made to third party operators of customer loyalty programs should be consistent with how a QLP's gross telecommunications services revenue is calculated and avoid double deductions. The accounting profession has issued an interpretation statement on the treatment of loyalty programs.[73] For companies issuing points in a program run by a third party the statutory operating revenue should typically be net of the amount paid to the third party for providing the loyalty points.	Not qualified revenue. The double deduction of payments to third party operators of loyalty programs is not allowed (eg, when the consideration has been netted off in calculating operating revenue as per the relevant statutory financial statements, it cannot also be deducted as the cost of bundled non-telecommunications goods and services).
Revenue from building, maintaining and renewing network infrastructure	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a public telecommunications network (PTN) or by means that rely primarily on the existence of the PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the QLP accordingly under NZ GAAP, is qualified revenue, because it is part of the telecommunications service provided by means of a PTN. Receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. This is because the building, maintaining and renewing activity is significant enough to define it as the creation of an asset rather than the operation of one.	Operational revenue is qualified revenue and receipts from capital contributions are legitimate deductions.

[73] NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programs.

Revenue stream	Rationale	Status
	However, the value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under GAAP.	
Revenue from the sale of mobile phone handsets that is not recovered through mobile access or calling charges (ie, sold separately)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act.	Non-qualifying telecommunications services revenue.
Revenue from the sale of mobile phone handsets recovered through mobile access or calling charges (sold as part of services provided in a bundle)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act. Due to difficulties in identifying the true value of this revenue stream, the Commission has allowed QLPs to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	Non-qualifying telecommunications services revenue.
Revenue derived from services provided in other countries	The criteria for qualified revenue as defined in section 5 of the Act still require telecommunications services to be provided by means of a PTN operated in New Zealand. These services fall outside the definition of qualified revenue.	Non-qualifying telecommunications services revenue.
Expenditure on purchasing telecommunications services from other QLPs	The Commission considers that the avoidance of double counting of revenue is a concern and allows a deduction for this type of expenditure as the value of the service is picked up in the QLP providing the service.	Legitimate deduction.
Expenditure on purchasing telecommunications services from a non-QLP that on-sells those services it purchased from another QLP	The Commission considers that this situation is analogous to purchasing services from another QLP directly. QLPs can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	Legitimate deduction.
Prompt payment discounts and credits for billing errors and omissions	The Commission allows deductions for prompt payment discounts and credits for billing errors and omissions as this allows the QLP to represent their true revenue totals.	Legitimate deduction.
Revenue from calling cards and prepay credits	The Commission considers all calling card and prepay credit revenue, whether used or expired is qualified revenue as it was acquired for the purposes of providing a telecommunications service .	Qualified revenue.

Revenue stream	Rationale	Status
Inbound roaming revenue	The Commission considers that revenue from inbound roaming is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile access and calling revenue	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is qualified revenue.	Qualified revenue.
Revenue earned from voice over IP calls that terminate or originate on a PSTN (PTN)	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice calls and SMS	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from toll by-pass/ direct dial calls by the QLP	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned by the QLP from late payment fees levied on customers for the late payment of outstanding accounts for telecommunications services	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from dial-up ISP service (Including modem banks)	Revenue from telecommunications services using a PTN is captured – PTN includes public data networks (PDN) and this service is captured under the PDN definition.	Qualified revenue.
xDSL services, Naked DSL services and services provided using a UCLL	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	Qualified revenue.
Business data services	Revenue from business data telecommunications services using a PTN is captured.	Qualified revenue.
Revenue derived from the supply of video on-demand content	The Commission considers that video on-demand content revenue is not captured as a telecommunications service as it can be distinguished from the conveyance revenue which is the intended focus of	Content revenue is non-qualifying telecommunications services revenue, and conveyance

Revenue stream	Rationale	Status
	the definition of telecommunications services.	revenue is qualified revenue.
Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a QLP's client uses it for a private purpose is not relevant to its qualified revenue status.	Qualified revenue.
Broadcasting services	The definition of 'telecommunications' in section 5 of the Telecommunications Act expressly excludes broadcasting.	Non-qualifying telecommunications services revenue.
Dark fibre, layer one, two and above services	Revenue from telecommunications services using a PTN are captured – revenue from providing telecommunications services by means of a PTN are captured regardless of the ISO layer.	Qualified revenue.
Satellite revenues	Telecommunications services provided in New Zealand via a satellite are supplied by means of the qualifying liable person's PTN.	Qualified revenue.
Revenue from selling customer premises equipment	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	Non-qualifying telecommunications services revenue.
Revenue from dumb caches, content delivery networks (CDN)	Revenue derived from operating this equipment relies on the existence of a PTN and is therefore within the definition of qualified revenue.	Qualified revenue.
Revenue from fibre dedicated to a single-user	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services.	Qualified revenue.
Revenue from early termination charges (telecommunications services revenue)	Early termination charges revenue derived from services or bundles of services that are all telecommunications services is qualified revenue. Early termination charges revenue derived from a bundle that includes end-user equipment which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is deducted (or had been deducted in a previous TDL year) from	Qualified revenue.

Revenue stream	Rationale	Status
	gross telecommunications services revenue is qualified revenue. This avoids the problem of a QLP deducting both the cost of equipment while not recognising the matching revenue when calculating qualified revenue	
Revenue from early termination charges (non-telecommunications revenue)	Early termination charges revenue derived from a bundle that includes non-telecommunications revenue (eg, end-user equipment), which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is not deducted (or has not been deducted in a previous TDL year) from gross telecommunications revenue, is not qualified revenue (to the extent it relates to the non-telecommunications equipment). This recognises that it relates to non-telecommunications equipment for which the cost had not been deducted when calculating qualified revenue.	Non-qualifying telecommunications services revenue.
Revenue from porting charges (also known as plan change fees)	The Commission considers that this is revenue from the day to day operations of a PTN and is therefore qualified revenue. As these charges are qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.	Qualified revenue.
Revenue from co-location	Revenue earned from co-location on cellular transmission sites (as the term is used in Schedule 1 of the Act) or co-location in a central office is captured as it is earned from facilities which are predominately operated by the qualifying liable person as part of a PTN.	Qualified revenue.
Ancillary revenue, earned by non-liable persons that are bodies corporate connected to a QLP via section 79 as an ancillary part of providing non-telecommunications goods and services.	The Commission considers that such revenue is not qualified revenue. This is where a non-liable person body corporate provides telecommunications services as an ancillary part of providing non-telecommunications goods or services, and the revenues earned from that service are not material to their overall revenue.	Not qualified revenue.
Telecommunications services	The Commission considers that such	Qualified revenue.

Revenue stream	Rationale	Status
revenue earned by non-liable persons that are bodies corporate connected to a QLP via section 79 in conjunction with providing telecommunications goods.	revenue is qualified revenue. This is where a non-liable person body corporate provides telecommunications services in conjunction with or as an ancillary part of providing telecommunications goods, For example, when a consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.	
Revenues received and payments made in relation to a telecommunications service that is currently subject to a pricing review by the Commission.	The values for qualified revenue received and for deductions for payments to other QLPs, should reflect the prices charged during the TDL year. For example, the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).	n/a
Payments relating to customer loyalty programs run by a third party	The treatment of payments made to third party operators of customer loyalty programs should be consistent with how a QLP's gross telecommunications services revenue is calculated and avoid double deductions. The accounting profession has issued an interpretation statement on the treatment of loyalty programs.[74] For companies issuing points in a program run by a third party the statutory operating revenue should typically be net of the amount paid to the third party for providing the loyalty points.	Not qualified revenue. The double deduction of payments to third party operators of loyalty programs is not allowed (eg, when the consideration has been netted off in calculating operating revenue as per the relevant statutory financial statements, it cannot also be deducted as the cost of bundled non-telecommunications goods and services).

[74] NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programs.

Attachment C – Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

<u>Section 5 Interpretation</u>

Liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person.

PTN or **public telecommunications network –**

(a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:

(b) includes –
  (i) a PSTN:
  (ii) a PDN.

Qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):
(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication.

<u>Section 79 When 2 or more bodies corporate must be treated as 1 person</u>

(1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—

  (a) one of them is a body corporate of which the others are subsidiaries; or
  (b) all of them are subsidiaries of the same body corporate; or
  (c) all of them are associates of each other; or
  (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
  (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

(2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

(3) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—

  (a) those bodies corporate are in competition in the same market; or
  (b) 1 of them supplies goods or services to the other.

<u>Section 80 Interpretation</u>

In this subpart, unless the context otherwise requires,—

financial statements,—

(a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and

(b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

minimum telecommunications revenue means $10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Section 81 Subpart does not apply to certain liable persons

(1) This subpart does not apply to a liable person in respect of a financial year (financial year A) if –
(a) the liable person was not trading in the financial year preceding year A; or
(b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

(2) For the purpose of determining whether a person is a liable person to whom this subpart applies in respect of a financial year, the Commission may, by written notice to that person, require the person to provide to the Commission, within the time specified in the notice,—
(a) a copy of the person's financial statements for the year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the telecommunications revenue of that person for the year preceding financial year A; and
(c) a certificate that complies with subsection (3).
(3) A certificate complies with this subsection if—
(a) it certifies the person's telecommunications revenue for the year preceding financial year A; and
(b) it is signed by 2 directors of the person with the authority of the other directors.

Section 82 Liable persons must produce information on qualified revenue

Not later than 60 working days before the end of each financial year (**financial year A**), each liable person must provide to the Commission a copy of—
(a) its financial statements for the financial year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

Section 83 Liable persons must produce information for purposes of liability allocation determination

(1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
(a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and

(b) a report that complies with subsection (2).

(2) A report complies with this subsection if—

(a) it is prepared by a qualified auditor; and

(b) it includes a statement of the extent to which the information provided by the liable person under subsection (1)(a) is correct and complete.

Section 84 Commission to prepare draft liability allocation determination

(1) The Commission must—

(a) prepare a draft liability allocation determination for each financial year; and

(b) give public notice of that draft determination; and

(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

Section 85 Matters to be included in draft liability allocation determination

(1) A draft liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of the liable person's qualified revenue

b is the sum of all liable persons' qualified revenue

c is the telecommunications development levy specified for the relevant year in Schedule 3B; and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).

Section 86 Conferences on draft liability allocation determination

The Commission may—

(a) hold conferences in relation to the draft liability allocation determination; and

(b) invite to those conferences any person who has a material interest in the determination.

Section 87 Commission to prepare final liability allocation determination

(1) The Commission must—

(a) prepare a final liability allocation determination; and

(b) give public notice of that final determination; and

(c) give a copy of that final determination to all liable persons.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

Section 88 Matters to be included in final liability allocation determination

A final liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

Attachment D – List of Qualifying Liable Persons for the 2015/16 Telecommunications Development Levy

1. The Commerce Commission (Commission) has identified those telecommunications service providers (TSPs) that are qualifying liable persons (QLPs) for the purposes of the 2015/16 Telecommunications Development Levy (TDL) in a list outlined in Tables 1 and 2 below. This means that these TSPs are required to provide the Commission with specified information in accordance with section 83 of the Telecommunications Act 2001 (Act), which the Commission will use to identify the portion of the TDL each QLP is required to pay.

2. The list of QLPs for the 2015/16 TDL year is based on information provided to date and is available on our website. The list is not final and may be reviewed and updated if required. [75]

3. In addition to this list, the Commission has also separately provided instructions for preparing the specified information required under section 83, templates for preparing the specified information, and a document containing relevant statutory references. These materials can also be found on our website.

Meeting the criteria

4. The TSPs identified in Tables 1 and 2 meet the criteria for "liable person" as defined in section 5 of the Act. They have also met the minimum telecommunications threshold as set out in sections 80 and 81 of the Act (meaning they earned more than $10 million in gross telecommunications revenue in the year preceding year A, which in this case is the 2014/15 financial year) and are accordingly QLPs.[76]

5. Some of the QLPs and their interconnected bodies corporate (as listed in Table 1) are treated as a single entity as required by section 79 of the Act.[77] This means that they are connected by way of a significant level of shareholding, common ownership/control by a third person, or the ability to exert a substantial degree of influence over the other (as identified in section 79 of the Act), and the Commission is required to treat them as a single entity for the purposes of the TDL.

Listing the QLPs

6. The Commission has identified two categories of QLPs: TSPs that are considered to be a single QLP entity under section 79 of the Act (identified in Table 1), and TSPs that are independent QLPs (identified in Table 2).

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[75] It is important to note that TSPs must self-report that they are QLPs no later than 60 working days before the end of the TDL year and provide financial statements for the preceding TDL year, along with any other information we require to verify that they are a QLP. We can also, at any time, seek financial or other information from a TSP to assist us to verify whether or not they are a QLP.

[76] Under section 5 of the Act, liable person means a person who provides a telecommunications service in New Zealand by means of some component of a public telecommunications network that is operated by that person.

[77] The QLP group may include one or more QLPs and any interconnected bodies corporate that earned telecommunications revenue in the 2014/15 financial year.

Explaining the reporting requirements

7. QLPs that include interconnected bodies corporate that are captured by section 79 of the Act (Table 1), can provide the specified information in a consolidated report or separate reports. Independent QLPs (Table 2) are required to provide the specified information in a report specific to their company.

Table 1

<table>
<tr>
<td>QLPs that include interconnected bodies corporate under section 79 of the Act</td>
<td><u>Chorus group:</u>
• Chorus Ltd; and
• Chorus New Zealand Ltd

<u>Crown companies group:</u>
• Enable group (Enable Networks Ltd & Enable Services Ltd);
• Kordia Ltd;
• REANNZ (Research & Education Advanced Network New Zealand Ltd);
• Transpower New Zealand Ltd;
• Ultrafast Fibre Ltd; and
• Whangarei Local Fibre Company Ltd (trading as Northpower Fibre).

<u>Spark group:</u>
• Spark New Zealand Ltd (formerly Telecom Corporation of New Zealand Ltd); and
• Spark New Zealand Trading Ltd (formerly Telecom New Zealand Ltd)
• Now New Zealand Limited (from 30 November 2015)

<u>Teamtalk group:</u>
• Teamtalk Ltd;
• Araneo Ltd;
• Bay City Communications Ltd; and
• Citylink Ltd

<u>Two Degrees group:</u>
• Two Degrees Mobile Ltd
• Snap Ltd

<u>Vocus group:</u>
• Vocus (New Zealand) Ltd
• Vocus Data Centres (New Zealand) Ltd
• M2 NZ Ltd
• FX Networks Ltd
• CallPlus Ltd;
• CallPlus Services Ltd;
• 2Talk Ltd;
• Flip Services Ltd; and</td>
</tr>
</table>

	• Orcon Ltd <u>Vodafone group:</u> • Vodafone New Zealand Ltd • Vodafone Next Generation Services Ltd

Table 2

Independent QLPs	• Compass Communications Ltd • Trustpower (Kinect) Ltd • Vector Communications Ltd